

FEDERAL BUREAU OF INVESTIGATION
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FOI/PA# 1602346-000

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 01/12/2005

On this date, the undersigned agent received through the mail a package of [REDACTED]

[REDACTED] were provided pursuant to a federal grand jury subpoena dated issued at United States District Court, Eastern District of Virginia, on December 4, 2004.

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Investigation on 1/3/05 at Falls Church, Virginia

File # 58A-WF-229569-38 Date dictated 1/12/05

by SA [REDACTED]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

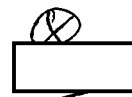
[REDACTED] 050123.302

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1/13/05

- 1 -

FEDERAL BUREAU OF INVESTIGATION

b6
b7CDate of transcription 12/15/2004

On this date, a federal grand jury subpoena dated 12/9/04
was served on [REDACTED]
[REDACTED]

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Investigation on 12/14/04 at Alexandria, Virginia (via facsimile)

File # 58A-WF-229569-29 Date dictated 12/15/04

by SA [REDACTED]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[REDACTED] 043503.302

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12/20/04

United States District Court**EASTERN DISTRICT OF VIRGINIA**

TO:

**SUBPOENA TO TESTIFY
BEFORE GRAND JURY**

b3

SUBPOENA FOR:

YOU ARE COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE

COURTROOM

UNITED STATES DISTRICT COURT
401 Courthouse Square
Alexandria, Virginia 22314

GRAND JURY ROOM

DATE AND TIME

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

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b6
b7C☐ Please see additional information on reverse

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK

DATE

ELIZABETH H. PARET, CLERK OF THE COURT**December 9, 2004**

(By) Deputy Clerk

This subpoena is issued on application
of the United States of America

PAUL J. MCNULTY
UNITED STATES ATTORNEY

NAME, ADDRESS and PHONE NUMBER OF ASSISTANT U.S. ATTORNEY

AUSA
U.S. Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314

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*If not applicable enter "none"

58A-WF-229569-28

- 1 -

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/15/2004

On this date, a federal grand jury subpoena dated 12/9/04
was served by mail on the [REDACTED]
[REDACTED]

b3
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b7CInvestigation on 12/9/04 at Baltimore, MarylandFile # 58A-WF-229569-32 Date dictated 12/9/04by SA [REDACTED]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency;
it and its contents are not to be distributed outside your agency.

[REDACTED] 043504.302b6
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12/20/04

United States District Court**EASTERN DISTRICT OF VIRGINIA**

TO:

**SUBPOENA TO TESTIFY
BEFORE GRAND JURY**

SUBPOENA FOR:

b3

YOU ARE COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE

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UNITED STATES DISTRICT COURT
401 Courthouse Square
Alexandria, Virginia 22314

GRAND JURY ROOM

DATE AND TIME

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AUSA
U.S. Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/15/2004

On this date, a federal grand jury subpoena dated 12/9/04
was served by mail on the [REDACTED]
[REDACTED]

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Investigation on 12/9/04 at Baltimore, MarylandFile # 58A-WF-229569-33 Date dictated 12/9/04by SA [REDACTED]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency;
it and its contents are not to be distributed outside your agency.

[REDACTED] 043505.302b6
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12/20/04

United States District Court**EASTERN DISTRICT OF VIRGINIA**

TO:

**SUBPOENA TO TESTIFY
BEFORE GRAND JURY**

b3

SUBPOENA FOR:

YOU ARE COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE

**UNITED STATES DISTRICT COURT
401 Courthouse Square
Alexandria, Virginia 22314**

COURTROOM

GRAND JURY ROOM

DATE AND TIME

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

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This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK

ELIZABETH H. PARET, CLERK OF THE COURT

(By) Deputy Clerk

DATE

December 9, 2004b6
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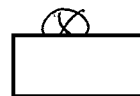
This subpoena is issued on application
of the United States of America

**PAUL J. MCNULTY
UNITED STATES ATTORNEY**

NAME, ADDRESS and PHONE NUMBER OF ASSISTANT U.S. ATTORNEY

**[REDACTED], AUSA [REDACTED]
U.S. Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314**

*If not applicable enter "none"

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/15/2004

On this date, a federal grand jury subpoena dated 12/9/04
was served on [REDACTED]
[REDACTED]

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Investigation on 12/14/04 at Alexandria, Virginia (via facsimile)

File # 58A-WF-229569-34 Date dictated 12/15/04

by SA [REDACTED]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[REDACTED] 043502. 302

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12/20/04

United States District Court**EASTERN DISTRICT OF VIRGINIA**

TO:

**SUBPOENA TO TESTIFY
BEFORE GRAND JURY**

SUBPOENA FOR:

b3

YOU ARE COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE

UNITED STATES DISTRICT COURT
401 Courthouse Square
Alexandria, Virginia 22314

COURTROOM

GRAND JURY ROOM

DATE AND TIME

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

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This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK

ELIZABETH H. PARET, CLERK OF THE COURT

(By) Deputy Clerk

DATE

December 9, 2004

This subpoena is issued on application
of the United States of America

PAUL J. MCNULTY
UNITED STATES ATTORNEY

NAME, ADDRESS and PHONE NUMBER OF ASSISTANT U.S. ATTORNEY

AUSA
U.S. Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314

*If not applicable enter "none"

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58A-WF-27569-30

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/17/2004

[redacted] telephone numbers [redacted] (work), [redacted] (cell), was interviewed at the Northern Virginia Resident Agency. Having been apprised of the identities of the interviewing agents and of the purpose for the interview, [redacted] provided the following information:

[redacted] date of birth is [redacted]. He has been an entrepreneur since [redacted] and has worked on a wide variety of business ventures on an international scale.

[redacted] was introduced to JACK SHAW by [redacted] around the time of the Iraq war in early 2003. [redacted] is certain this introduction was made at the Pentagon or at the METROPOLITAN CLUB in Washington D.C. Since the introduction, [redacted] has met with SHAW around three or four times in SHAW's Pentagon office and three or four times at the METROPOLITAN CLUB. [redacted] made the introduction to SHAW because [redacted] had asked him to introduce him to "greyhairs" in the United States government to whom he could feed information about Europe, Iraq, and other areas in the world where [redacted] has developed extensive contacts. [redacted] has found SHAW to be a "great intellect" and has used him as a "sounding board" for his concerns about the negative consequences of the pan-European movement sweeping the continent. [redacted] has also discussed these concerns with other high-level former and current United States officials, including GEORGE SCHULTZ and HENRY KISSINGER.

[redacted] has met with SHAW in London on two occasions. A third meeting they had scheduled at an establishment called "BOODLES" in London was canceled when SHAW's travel plans in Europe changed at the last minute. Instead, SHAW stopped off and visited [redacted] at his home in [redacted] on his way back to the United States. [redacted] has had no other meetings with SHAW in Europe.

[redacted] described [redacted] as a great friend whom he first met in 1992 during the course of a business deal in Latvia. [redacted] has been a consultant on several business ventures put together by [redacted] since then. [redacted] used to work for SHAW at the United States Department of Commerce. [redacted] is not aware of

Investigation on 12/15/04 at Falls Church, Virginia

File # 58A-WF-229569-35 Date dictated 7/17/04

by SA [redacted]
SA [redacted]

58A-WF-229569

Continuation of FD-302 of _____, On 12/15/04, Page 2

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any current or former business relationship between _____ and SHAW.

Around the beginning of the Iraq war in early 2003, _____ put together a consortium of individuals and companies which he named LIBERTY MOBILE. This consortium was incorporated in Delaware for the purpose of providing to the United States Department of Defense (DOD) cellular telephone service in Iraq both during and after the war. LIBERTY MOBILE included some of the best and brightest telecommunications engineers and companies in the world. It offered to build a cellular telephone system in Iraq at no cost to the United States government using the most advanced CDMA cellular telephone technology. _____ hired lobbyists from AIKEN GUMP in Washington D.C. to champion LIBERTY MOBILE's cause. He also sold JACK SHAW on the virtues of CDMA technology and the strength of LIBERTY's proposal. SHAW became an advocate for LIBERTY MOBILE because what LIBERTY MOBILE was trying to do made "glaring common sense." CDMA technology is superior to GSM technology because of its security features and enhanced data and voice transmission capabilities. _____ was convinced that, in a wartime and post-war environment, the use of the superior CDMA technology in the rebuilding of the Iraqi telecommunications system would save Iraqi and American lives. After _____ convinced SHAW of the superiority of CDMA technology, SHAW became an enthusiastic proponent of LIBERTY MOBILE's proposal. Unfortunately, LIBERTY MOBILE's unsolicited proposal was not accepted and LIBERTY MOBILE ended up competing for Iraqi cellular telephone licenses in a tender process run by the Coalition Provisional Authority (CPA) in the summer of 2003. _____ did not introduce _____ to SHAW for the purpose of soliciting his support for LIBERTY MOBILE's proposal. In fact, _____ had met with SHAW on three or four occasions before he ever raised the Iraqi cellular telephone issue. In those meetings, _____ passed on information to SHAW about political and economic developments in Europe.

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In the fall of 2003, _____ was introduced to the idea of partnering with NANA PACIFIC to pursue the First Responders Network (FRN) contract in Iraq in a telephone call with _____. _____ in SHAW's Pentagon office. _____ explained the Alaskan Native Corporation (ANC) 8a concept to _____ stressing that NANA PACIFIC, as a qualified ANC 8a corporation, could receive sole source contracts. At first, _____ was not particularly excited about the FRN project because he had become jaded by the illegitimate cellular telephone tender process. However, _____ persuaded him that the FRN contract was worth pursuing in that it

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58A-WF-229569

Continuation of FD-302 of [REDACTED], On 12/15/04, Page 3

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would be a good opportunity to introduce superior CDMA technology into Iraq using the same team of highly qualified engineers and technology companies which had comprised LIBERTY MOBILE. [REDACTED] formed GUARDIAN NET CONSORTIUM and negotiated a partnership with NANA PACIFIC. [REDACTED] was first introduced to [REDACTED] in a conference telephone call in the autumn of 2003.

The FRN venture started out in a promising fashion.

[REDACTED] in Bagdad, was brought on board and seemed to be supportive of the project. Everything was on track and it appeared that the NANA PACIFIC/GUARDIAN NET partnership was to receive a contract to build a nationwide FRN in Iraq. Then, slowly, things began to fall apart. Small changes to the project began to creep in, all of which seemed designed to undermine the CDMA component of the project. First, [REDACTED] suddenly decided to hold a ninety day trial of the FRN system in Bagdad to compare GSM and CDMA technology. Next, [REDACTED] was told the project had to include the installation of a GSM switch. Then, [REDACTED] was told the partnership had to hire certain individuals, including [REDACTED] a [REDACTED] engineer who had been instrumental in insuring that the three Iraqi cellular telephone licenses went to consortia using GSM technology. It became evident to [REDACTED] that [REDACTED] who had [REDACTED] process which had guaranteed that the cellular telephone system of Iraq would utilize GSM technology, was doing everything he could to guarantee that CDMA technology was not utilized in the FRN project. [REDACTED] speculates that the three winners of the cellular telephone licenses had influenced [REDACTED] to prohibit the introduction of CDMA technology to Iraq. [REDACTED] believes that for some reason [REDACTED] was beholden to the three license winners.

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In the end, [REDACTED] and [REDACTED] prevented the NANA PACIFIC/GUARDIAN NET proposal from being accepted. They claimed it was because of language inserted into the proposal which read "the FRN shall be designed so that the operators of the network shall be able to offer commercial cellular service on a nationwide basis throughout Iraq." [REDACTED] claimed that this expansion of the FRN to a nationwide commercial network was prohibited by the guidelines established by Congress. However, language prohibiting such a expansion, which was submitted by [REDACTED] to Congress in his supplemental budget request in 2003, was dropped by Congress in the final legislation. In fact, the original statement of work for the FRN contract which was forwarded to NANA PACIFIC/GUARDIAN NET by

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58A-WF-229569

Continuation of FD-302 of [REDACTED], On 12/15/04, Page 4

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the CPA contracting office included the offending language; however, it was dropped from a subsequent draft. [REDACTED] had the language reinserted in the final proposal only after consulting with SHAW, who told him to put it back in. In any event, instead of requesting that the offending language be dropped from the NANA PACIFIC/GUARDIAN NET proposal, [REDACTED] used the issue to kill the proposal. [REDACTED] actions reinforced [REDACTED] belief that [REDACTED] simply did not want anything but GSM technology used in the telecommunications system of Iraq.

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At the conclusion of the interview, [REDACTED] provided a packet of documents to the interviewing agents.

FEDERAL BUREAU OF INVESTIGATION

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Precedence: ROUTINE

Date: 01/04/2005

To: Criminal Investigative

Attn: Public Corruption/
Government Fraud Unit

From: ✓ Washington Field Office
Squad CR-15

Contact: SA [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]

Case ID #: 58A-WF-229569,36 (Pending)

Title: JOHN ARTHUR SHAW;
DEPUTY UNDERSECRETARY OF DEFENSE
FOR INTERNATIONAL TECHNOLOGY SECURITY,
UNITED STATES DEPARTMENT OF DEFENSE;
CONFLICT OF INTEREST

Synopsis: The purpose for this EC is to request SAC authority to convert this preliminary inquiry into a full field investigation.

Reference: 58A-WF-229569 Serial 1

Enclosure(s): Enclosed for the Public Corruption/ Governmental Fraud Unit are the original and one copy of a self-explanatory LHM regarding captioned matter.

Details: This matter was referred to WFO by the Defense Criminal Investigative Service (DCIS), United States Department of Defense, on June 10, 2004. Details regarding the basis for opening the captioned matter are provided in the enclosed LHM. As DCIS has recused itself, the FBI is the sole investigative agency in this matter.

♦♦

[REDACTED] 05004 3. EC

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U.S. Department of Justice



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Federal Bureau of Investigation

In Reply, Please Refer to

File No. 58A-WF-229569-37

Fallls Church, Virginia

January 4, 2005

JOHN ARTHUR SHAW;
DEPUTY UNDERSECRETARY OF DEFENSE,
FOR INTERNATIONAL TECHNOLOGY SECURITY,
UNITED STATES DEPARTMENT OF DEFENSE;
CONFLICT OF INTEREST

A preliminary inquiry was initiated in this matter following a referral from the Defense Criminal Investigative Service (DCIS), Office of Inspector General (OIG), United States Department of Defense (DOD), on June 10, 2004. DCIS had been investigating allegations that John Arthur Shaw, Deputy Undersecretary of Defense for International Technology Security, had improperly influenced the award process of a DOD contract in possible violation of Title 18, USC, Section 208 (Conflict of Interest). DCIS recused itself from the investigation because of a possible conflict of interest arising from the fact that the OIG, DOD, had signed a Memorandum of Understanding (MOU) with Shaw granting him certain OIG investigative authority over matters coming under his purview.

Background:

On March 13, 2004, DCIS received information from

[redacted] that

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[redacted]

alleged that

[redacted]

Assistant United States Attorneys assigned to this matter have opined that

[redacted]

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250042. LHM



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[REDACTED]

Investigation conducted to date has confirmed that Shaw, in an official capacity, intervened on numerous occasions to steer the FRN contract to NANA Pacific and Guardian Net. It has been determined that the two major principals of Guardian Net are [REDACTED], a long-time personal friend and former business partner of Shaw, and [REDACTED] with whom Shaw has developed a social and professional relationship. However, no evidence has been developed to date showing that Shaw had any financial interest in NANA Pacific or Guardian Net. Furthermore, no evidence has been developed to date indicating that Shaw has received anything of value for his efforts to steer the FRN contract to NANA Pacific and Guardian Net; however, it has been determined that Shaw had a secret meeting with [REDACTED] in Paris, France, in February, 2003, just before he began performing official actions on [REDACTED] behalf. It appears that [REDACTED] paid for Shaw's round trip tickets on Air France and three nights of lodging at the Paris Hilton relating to this secret meeting. No details of this meeting have been developed to date.

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An analysis of Shaw's personal finances has been initiated to determine whether he has received anything of value in return for his official actions. Numerous interviews have been conducted, including initial interviews of [REDACTED] and [REDACTED]. Voluminous DOD records relating to this matter are in the process of being reviewed.

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FEDERAL BUREAU OF INVESTIGATION

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[Redacted]

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Precedence: ROUTINE

Date: 12/10/2004

To: Washington Field

From: Washington Field
Squad CR15

Contact: SA [Redacted]

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Approved By: [Redacted]

Drafted By: [Redacted]

Case ID #: 58A-WF-229569 ²⁶ (Pending)

Title: JOHN A. SHAW,
DEPUTY UNDERSECRETARY OF DEFENSE
FOR INTERNATIONAL TECHNOLOGY SECURITY,
U.S. DEPARTMENT OF DEFENSE;
POSSIBLE CONFLICT OF INTEREST

Synopsis: Contact with DOD OIG official [Redacted].

Details: On 12/9/04, the writer telephonically contacted [Redacted] [Redacted] DOD OIG official assigned to serve as a liaison with the FBI in captioned investigation. [Redacted] advised that in a 12/6/04 letter, subject JOHN SHAW was notified by the Office of the Secretary, DOD, that his appointment as a Deputy Undersecretary of Defense would be concluded on 12/10/04. [Redacted] provided by facsimile a copy of this letter, which is attached.

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On the same date, [Redacted] provided by facsimile several DOD documents related to SHAW's termination, copies of which are attached.

The writer requested that [Redacted] take the appropriate steps to secure SHAW's official office computer and, if applicable, his official laptop computer, as soon as possible.

♦♦

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12/10/04

FEDERAL BUREAU OF INVESTIGATION
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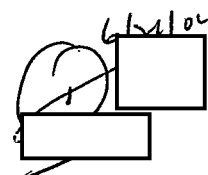
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U.S. Department of Justice

Federal Bureau of Investigation



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In Reply, Please Refer to

File No. 58A-WF-229569-1

Falls Church, Virginia

June 14, 2004

~~JOHN ARTHUR SHAW;~~
~~DEPUTY UNDERSECRETARY OF DEFENSE~~
~~FOR INTERNATIONAL TECHNOLOGY SECURITY,~~
~~UNITED STATES DEPARTMENT OF DEFENSE,~~
POSSIBLE CONFLICT OF INTEREST

This preliminary inquiry was initiated following a referral from the Defense Criminal Investigative Service (DCIS), Office of Inspector General (OIG), United States Department of Defense (DOD), on June 10, 2004. DCIS has been investigating allegations that John Arthur Shaw, Deputy Undersecretary of Defense for International Technology Security, had been improperly influencing the award process of a DOD contract in possible violation of Title 18, United States Code, Section 208 (Conflict of Interest). DCIS is recusing itself in this matter because of a series of contacts between Shaw and officials in the DOD Office of the Inspector General.

Background:

On March 13, 2004, DCIS received information from

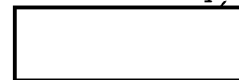
[redacted] that
[redacted]
[redacted]
[redacted] alleged that [redacted]
[redacted]

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Investigation conducted by DCIS has developed significant evidence that Shaw intervened on numerous occasions in the award process of this contract. To date, the DCIS investigation has not developed evidence that Shaw has any financial interest in the awarding of the contract to NANA.

WFO has consulted with the United States Attorneys Office, Eastern District of Virginia, which has concurred with

041662.LHM



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6/14/04

07/08/05
14:07:48

FD-192

ICMIPR01
Page 1

Title and Character of Case:

SHAW, JOHN, ARTHUR

Date Property Acquired: 07/08/2005
Source from which Property Acquired: CART EXAM

Anticipated Disposition: Acquired By:

Case Agent:

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b7C

Description of Property:

Date Entered

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DEWF2 - CD OF

b7E

Barcode: E03873456

Location: MRA3

CAB1

DR5

07/08/2005

Case Number: 58A-WF-229569
Owning Office: WASHINGTON FIELD

FILE COPY

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7/13/08

04/13/05
09:57:55

FD-192

ICMIPR01
Page 1

Title and Character of Case:

SHAW, JOHN, ARTHUR
-

Date Property Acquired: 04/06/2005
Source from which Property Acquired: CART EXAM

Anticipated Disposition: Acquired By:

[REDACTED]

Case Agent:

[REDACTED]

b6
b7C

Description of Property:

1B 4

Date Entered

DEWF1: HD CONTAINING [REDACTED] FROM ITEM 1B2

b7E

Barcode: E03827747

Location:

04/13/2005

Case Number: 58A-WF-229569
Owning Office: WASHINGTON FIELD

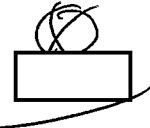
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[REDACTED]

5/18/15

FEDERAL BUREAU OF INVESTIGATION



Precedence: ROUTINE

Date: 06/14/2004

To: Criminal Investigative

Attn: Public Corruption/
Government Fraud Unit

From: Washington Field

Squad CR-2/ NVRA

Contact: SA [redacted]

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Approved By: [redacted]

Drafted By: [redacted]

Case ID #: 58A-WF-NEW ²²⁹⁵⁶⁹⁻² (Pending)

Title: JOHN ARTHUR SHAW;
DEPUTY UNDERSECRETARY OF DEFENSE,
FOR INTERNATIONAL TECHNOLOGY SECURITY,
UNITED STATES DEPARTMENT OF DEFENSE;
POSSIBLE CONFLICT OF INTEREST

Synopsis: The purpose for this EC is to request SAC authority to open a preliminary inquiry into the above-captioned matter.

Enclosure(s): Enclosed for the Public Corruption/ Government Fraud Unit are the original and one copy of a self-explanatory LHM regarding captioned matter.

Details: This matter was referred to WFO by the Defense Criminal Investigative Service (DCIS), Office of the Inspector General (OIG), United States Department of Defense, on June 10, 2004. Details regarding the basis for opening the captioned matter are provided in the enclosed LHM. As DCIS has recused itself, the FBI will serve as the sole investigative agency in this matter.

♦♦

PLEASE SET
APPROPRIATE
HICKLENS
[redacted]
04/661.EE

6/17/04
CC: SAC [redacted]
Kensal

6/18/04
O+A
Coda
[redacted]
6/14/04
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- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 08/10/2004

[redacted]
[redacted]
[redacted] cell phone: [redacted] was interviewed at the Tysons Corner Resident Agency of Washington Field Office. Having been apprised of the identities of the interviewing agents and of the purpose for the interview, [redacted] provided the following information:

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[redacted] has retained [redacted], a lawyer with the firm of [redacted], in Washington D.C., [redacted] in the matter of JOHN SHAW and to handle media issues in this regard. [redacted] does not represent [redacted] as a witness in a criminal investigation of the SHAW matter. [redacted] did not want or ask [redacted] to participate in this day's interview at the Tysons Corner Resident Agency.

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[Large redacted area]

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Investigation on 8/9/04 at McLean, Virginia

File # 58A-WF-229569-3
SA [redacted]
by SA [redacted]

Date dictated 8/10/04

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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency;

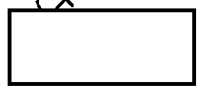
[redacted] 042291.302

8/17/04



U.S. Department of Justice

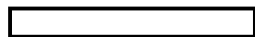
Federal Bureau of Investigation



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In Reply, Please Refer to
File No. 58A-WF-229569

August 24, 2004

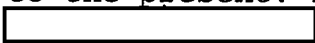
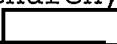
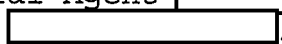


Resident Agent in Charge, Indianapolis Resident Agency
Defense Finance and Accounting Service
United States Department of Defense
Indianapolis, Indiana

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RE: John Arthur Shaw

Dear RAC 

In connection with an official investigation, I am requesting that you provide copies of vouchers and all other records relating to the official travel of John Arthur Shaw, date of birth April 1, 1939, social security number 194-30-8846, in his capacity as Deputy Undersecretary of Defense (DUSD) for Acquisition, Technology, and Logistics (AT&L) from January 1, 2002, to the present. Please provide these records to Special Agent , Squad CR-15, Federal Bureau of Investigation, Northern Virginia Resident Agency (NVRA), 7799 Leesburg Pike, Falls Church, Virginia, 22043. Feel free to contact Special Agent  by telephone at  or by facsimile at , with any questions.

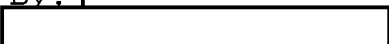
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Thank you for your assistance in this matter.

Sincerely yours,

Michael Mason
Assistant Director

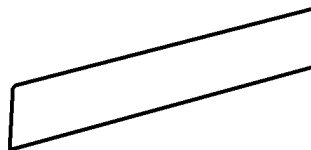
By: 


Supervisory Special Agent

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58A-WF-229569-4

 042371.let



8/24/04

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 08/26/2004b6
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[redacted] number [redacted] date of birth [redacted] social security number [redacted] (home), [redacted] (cell), was interviewed at the Northern Virginia Resident Agency. Having been apprised of the identity of the interviewing agent and of the purpose for this interview, [redacted] provided the following information:

[redacted] is not represented by counsel as a witness in a criminal investigation of certain actions of JOHN A. SHAW, Deputy Undersecretary of Defense for Acquisition, Technology, and Logistics (AT&L), United States Department of Defense (DOD).

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[redacted] has retained [redacted] an attorney for [redacted] in Washington D.C., to represent him regarding public relations issues and possible civil actions against SHAW relating to [redacted]

[redacted] does not wish an attorney to represent him during this interview.

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Investigation on 8/25/04 at Falls Church, Virginia

File # 58A-WF-229569-5 Date dictated 8/26/04

by SA [redacted]

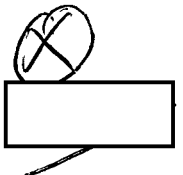
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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[redacted] 042464.302

9/8/04

FEDERAL BUREAU OF INVESTIGATION



Precedence: ROUTINE

Date: 09/01/2004

To: Washington Field

Attn: SA [redacted]
Mail Cover Coord.

From: Washington Field
Squad CR-15
Contact: SA [redacted]

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Approved By: [redacted]

1404 a/7/04

Drafted By: [redacted]

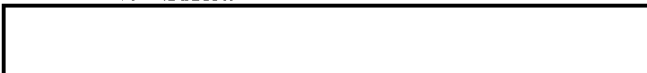
Case ID #: 58A-WF-229569-6 (Pending)
WF 66F-A5206-A-165 (Pending)

Title: JOHN ARTHUR SHAW;
DEPUTY UNDERSECRETARY OF DEFENSE
FOR INTERNATIONAL TECHNOLOGY SECURITY,
UNITED STATES DEPARTMENT OF DEFENSE;
POSSIBLE CONFLICT OF INTEREST

Synopsis: Request SAC approval to place a mail cover on the subject's residence.

Details: The purpose of this communication is to request SAC authority for a thirty day mail cover, first class mail only, on the primary residence of the subject:

John A. Shaw



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In July, 2004, the Washington Field Office (WFO) initiated an investigation into allegations that John Arthur Shaw, Deputy Undersecretary of Defense for International Technology Security, had engaged in actions which constituted a conflict of interest in violation of Title 18, USC, Section 208, Conflict of Interest, a felony punishable by imprisonment of up to five years. The allegations relate to actions taken by Mr. Shaw to steer a telecommunications contract in post-war Bagdad, Iraq, to an Alaskan Native Corporation (ANC) 8a firm called Nana Pacific and a consortium called Guardian Net Consortium, several members of which are friends of Shaw's. The allegations have been made by former officials of the Coalition Provisional Authority (CPA) in Iraq who worked [redacted] on the

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[redacted] 042452.2c

[redacted]
9/1/04

To: Washington Field From: Washington Field
Re: 58A-WF-229569, 09/01/2004

telecommunications contract. The mail cover should help establish whether Mr. Shaw had any financial interest in steering the contract to these companies, by identifying any correspondence between Mr. Shaw and these companies and/or their representatives and by identifying financial institutions whose records may contain evidence of a financial relationship between them.

The mail cover request will be directed to the Mail Cover Specialist, Criminal Investigation Service Center, United States Postal Inspection Service, Suite 1250, 222 South Riverdale Plaza, Chicago, Illinois, 60606-6100.

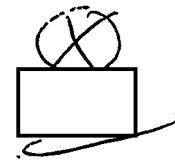
Mr. Shaw is not currently under indictment.

Mr. Shaw is represented by [REDACTED] of the Aegis Law Group in Washington D.C.

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FEDERAL BUREAU OF INVESTIGATION



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Precedence: ROUTINE

Date: 09/02/2004

To: Paris

Attn: Legat

From: Washington Field

Squad CR-15

Contact: SA [REDACTED]

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b7E

Approved By: [REDACTED]

Drafted By: [REDACTED]

Case ID #: 58A-WF-229569 ✓ (Pending)

Title: JOHN ARTHUR SHAW,
DEPUTY UNDERSECRETARY FOR DEFENSE
FOR INTERNATIONAL TECHNOLOGY SECURITY,
UNITED STATES DEPARTMENT OF DEFENSE;
POSSIBLE CONFLICT OF INTEREST

Synopsis: Set lead to obtain information from The Hilton Paris,
Paris, France

Details: This case was referred to WFO by the Defense Criminal Investigative Service (DCIS), United States Department of Defense. It was predicated upon allegations made by two officials of the Coalition Provisional Administration (CPA) in Iraq that in late 2003 and early 2004 the captioned subject had "exerted undue influence" over the selection of an Alaska Native Corporation (ANC) 8a small business, NANA Pacific, for the Iraqi First Responder Network (FRN) contract awarded by the CPA contracting authority. The contract, which had the potential of being worth hundreds of millions of dollars, was for the building of a nationwide radio network for first responding government agencies such a police departments and fire departments. NANA Pacific had partnered with a consortium of entrepreneurs and high tech corporations (Lucent, Qualcomm, Samsung) called Guardian Net Consortium.

Investigation to date has determined that subject John A. Shaw has personal and professional relationships with several individuals affiliated with Guardian Net Consortium, including

[REDACTED]

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[REDACTED] Investigation has also confirmed that the Shaw went to extraordinary lengths to insure the contract was awarded to NANA Pacific/Guardian Net on a no-bid, sole-source

[REDACTED] 042467. EC

[REDACTED]
9/3/04

To: Paris From: Washington Field
Re: 58A-WF-229569, 09/02/2004

basis under one of the Small Business Administration (SBA) set-aside programs.

A review of the subject's Department of Defense e-mail records uncovered several e-mails which indicate that Shaw took a trip to Paris, France, in February, 2003, to meet with [redacted] and another others identified only as "the clients."

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In the first of two e-mails dated February 14, 2003, Shaw told [redacted] that he had to change the venue of the meeting to Paris instead of "[redacted]" In the second e-mail on the same date Shaw told [redacted] "Book me a room at the same hotel as you but as a separate booking. Counsel that you have several floors separation from the clients if they are at the same hotel. Another [hotel] would be better still."

In an e-mail dated February 17, 2003, [redacted] provided an itinerary for Shaw indicating that he had reserved for Shaw a room for three nights (February 19th, 20th, and 21st, 2003) at The Hilton Paris, 18 Avenue de Suffern, Paris, 75015, telephone number 33 144 385 600, booking reference [redacted] concluded the e-mail by telling Shaw, "The booking is made in your name, room charge fully paid up in my name (just in case there are any queries)"

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In a subsequent e-mail dated March 3, 2003, Shaw told another DOD official that he had made a trip to Paris to attend the February 20 funeral of a French godson.

In view of the cryptic nature of the e-mails and the fact that, shortly after this trip to Paris, Shaw began using his position at DOD to steer a very lucrative contract to Guardian Net Consortium, of which [redacted] was the Director, WFO believes that any arrangements that may have been made with [redacted] to financially benefit Shaw took place during this trip to Paris. At the very least, it appears that [redacted] paid for Shaw's hotel room at The Hilton Paris from February 19 through February 21, 2003. WFO's airport liaison is also attempting to determine who paid for Shaw's flights to and from Paris.

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John Arthur Shaw's date of birth is 4/1/39 and his social security number is 194-30-8846. He has a Maryland driver's license with a Maryland address of [redacted]
[redacted]

WFO is attempting to develop details of Shaw's trip to Paris, including where he stayed, who paid for the accommodations, and whom he met with during his visit.

To: Paris From: Washington Field
Re: 58A-WF-229569, 09/02/2004

LEAD(s):

Set Lead 1: (Action)

PARIS

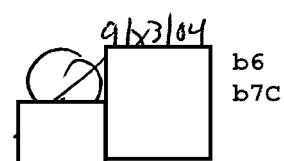
AT PARIS, FRANCE

Will coordinate with appropriate law enforcement authorities to contact The Hilton Paris, 18 Avenue de Suffern, Paris, 75015, telephone number 33 144 385 600, to determine whether Shaw, [REDACTED]

[REDACTED] stayed at the hotel on or about the nights of February 19, 20, and/or 21, 2003. If so, will determine details about the stays, including method of payment for each room and the identities of other occupants in each room. Will obtain room telephone records for those nights. If possible, in an effort to identify "the clients," will obtain a list of all guests at the hotel for the nights of February 19, 20, and 21, 2003

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 09/20/2004

On this date the undersigned agent accepted custody via the U.S. mail of copies of certain travel records relating to Deputy Undersecretary of Defense John A. Shaw from [redacted] [redacted] Resident Agent-in-Charge, Department of the Army, Indianapolis Fraud Resident Agency, U.S. Army Criminal Investigation Command, Major Procurement Fraud Unit, 8899 East 56th Street, Column 218B, Indianapolis, Indiana, 46249.

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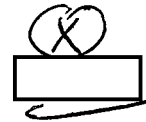
These records were secured in a locked cabinet in the CR-15 squad area.

Investigation on 9/20/04 at Washington D.C.File # 58A-WF-229569-8 Date dictated 9/20/04by SA [redacted]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[redacted] 042662.302b6
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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 09/22/2004

On this date, the undersigned agent accepted custody through the United States mail of a copy of an investigative file from the Inspector General, Department of Defense, Defense Criminal Investigative Service, Mid-Atlantic Field Office, 201 12th Street, Suite 712, Arlington, Virginia, 22202-4306.

This file was secured in a locked cabinet in the CR-15 squad area.

Investigation on 9/20/04 at Falls Church, Virginia

File # 58A-WF-229569-9 Date dictated 9/22/04

by SA [redacted]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

042662.302

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U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

601 4th Street, N.W.
Washington, DC 20535
September 10, 2004

[redacted]
Director of Investigative Policy and Oversight
Department of Defense
Office of Inspector General
400 Army Navy Drive
Arlington, Virginia 22202

Dear [redacted]

The Federal Bureau of Investigation (FBI), Washington Field Office, pursuant to a pending criminal investigation, hereby requests all files, records and other documentation directly or indirectly related to any Department of Defense investigations or inquiries concerning John "Jack" Shaw that have otherwise not been provided to the FBI.

Please make all the necessary arrangements for these documents, files and records to be provided to Special Agent (SA) [redacted] at your earliest convenience. SA [redacted] may be reached at [redacted] for further information.

The FBI greatly appreciates your cooperation in this matter.

Sincerely,

[redacted]

Supervisory Special Agent
Federal Bureau of Investigation
Washington Field Office
Public Corruption/Civil Rights

Memorandum



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To : Washington Field

Date 03/14/2005

From : Paris

Subject: 58-WF-229569

(Title)

- ☐ RUC
☐ File Destruction Program

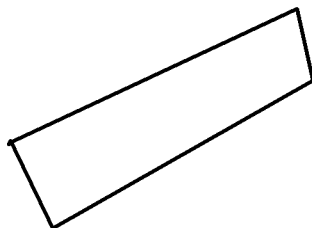
Enclosed are 1 items.

These items are forwarded to your office since file meets criteria for destruction.

Enclosures are described as follows:

- ☐ Original Notes.
☐ Original FD-302's.
☐ Laboratory and/or Technical Reports.
☒ Miscellaneous Documents.

original serial 11



Enc. 1

Note: Do Not Block Stamp Original Enclosures.

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4/1/05

03/29/05

View Case

ICMCM002

11:26:39

Page 1 of 3

View Case, then press Enter

Case ID. : 58A-WF-229569

Class. : 058 A CORR OFFS-EXEC BR EX

Status : P PENDING

Squad. : CR15 CRIMINAL SQUAD 15

Source : 07 US GOVT AGENCY

Case Type. :

Opened : 06/21/2004

Identity Theft . . . : N

Title

SHAW, JOHN, ARTHUR

-

Summary

1

Command . . > +

F1=Help, F3=Exit, F4=Prompt, F6=Multv, F7=Bkwd, F8=Fwd, F11=NextPg, F12=Cancel

F13=ListSerial

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- 1 -

FEDERAL BUREAU OF INVESTIGATION

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b7CDate of transcription 09/28/2004

On this date, the undersigned agent accepted custody via the United States mail from [redacted] of [redacted]. These records were provided by [redacted] pursuant to a federal grand jury subpoena dated 9/3/04.

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These records were secured in a locked cabinet in the CR-15 squad area.

Investigation on 9/28/04 at Falls Church, Virginia

File # 58A-WF-229569 -12 Date dictated 9/28/04

by SA [redacted]

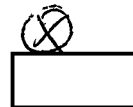
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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[redacted] 042721.302

9/28/04

FEDERAL BUREAU OF INVESTIGATION



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Precedence: ROUTINE

Date: 09/30/2004

To: Washington Field

From: Washington Field
Squad CR-15

Contact: SA [REDACTED]

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Approved By: [REDACTED]

Drafted By: [REDACTED]

Case ID #: 58A-WF-229569¹³(Pending)

Title: JOHN A. SHAW,
DEPUTY UNDERSECRETARY OF DEFENSE
FOR ACQUISITIONS, LOGISTICS, AND TECHNOLOGY
POSSIBLE CONFLICT OF INTEREST

Synopsis: Meeting at DOD.

Details: On September 29, 2004, the writer met with [REDACTED] Chief, Oversight and Investigative Policy Section, Office of Inspector General, United States Department of Defense, in his office located at 400 Army Navy Drive, Arlington, Virginia. [REDACTED] reviewed with the writer all of the documents his office had collected to date pursuant to an e-mail request to all employees of DOD to provide all documents in their possession relating to the Shaw case. The writer advised he would prefer to accept custody of all of the documents collected by [REDACTED] in one transfer, rather than in a piecemeal fashion. For this reason, the writer did not accept custody of any documents at this meeting.

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[REDACTED] 042741.2e

[REDACTED] b6
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9/30/04

- 1 -

FEDERAL BUREAU OF INVESTIGATION

10/13/04
[redacted]
[redacted]b6
b7CDate of transcription 10/07/2004

On this date, [redacted] Assistant Inspector General for Investigations, Office of the Inspector General, United States Department of Commerce, Washington D.C., 20230, provided copies of the 2000, 2001, and 2002 Confidential Financial Disclosure Reports (OGE Form 450) and the 2003 Confidential Certificate of No New Interests (OGE Optional Form 450 A) for [redacted]
[redacted]

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These documents were transported to the Northern Virginia Resident Agency where they were secured in a locked cabinet on the CR-15 Squad area.

Investigation on 9/5/04 at Washington D.C.

File # 58A-WF-229569-14 Date dictated 9/7/04

by SA [redacted]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[redacted] 042811-302

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10/7/04

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/20/2004b6
b7C

[redacted] Special Agent, Investigative Oversight Directorate, Office of Inspector General, United States Department of Defense, provided the undersigned agent with a box of records collected pursuant to a DOD-wide request for all records pertaining to JOHN A. SHAW, Deputy Undersecretary of Defense for International Technology Security.

These records were transported to the Northern Virginia Resident Agency where they were secured in a locked cabinet in the CR-15 squad area.

Investigation on 10/20/04 at Arlington, Virginia

File # 58A-WF-229569-15 Date dictated 10/20/04

by SA [redacted]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[redacted] 042942.302

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10/20/04

On October 13, 2004, SA [] reviewed the "PRELIMINARY FINDINGS: REPORT TO THE INSPECTOR GENERAL INTO MOBILE TELECOMMUNICATIONS LICENSES IN IRAQ" which was submitted to the OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, on May 11, 2004. This report was written by EDWARD TIMBERLAKE, an assistant to JOHN A. SHAW, DEPUTY UNDERSECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS. The following is a summary of some of the information contained in the report:

An Memorandum of Understanding (MOU) dated August 4, 2003 between the OFFICE OF THE INSPECTOR GENERAL and the UNDERSECRETARY OF DEFENSE FOR ACQUISITION AND LOGISTICS, gave broad investigatory authority to the INTERNATIONAL ARMAMENT AND TECHNOLOGY TRADE (IATT) DIRECTORATE. The purpose of the MOU was to create an office in the OIG which brought together the strong analytical, scientific, and technological capabilities of the AT&L as vested in the office of DEPUTY UNDERSECRETARY FOR INTERNATIONAL TECHNOLOGY SECURITY (DUSD-ITS) with the investigative capabilities and mandated authority of the OIG in the area of technology transfer and munitions controls. The OFFICE OF INSPECTOR GENERAL withdrew from the MOU on March 25, 2004. However, to fulfill its residual responsibilities under the MOU, the restructured IATT office completed this investigation and report as a subdivision of the OFFICE OF THE UNDERSECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS DUSD, ATL).

The report contains the fruit of six months of work by IATT staff. The investigation underlying the report was initiated after it received "universal complaints" that the U.S. and British-sponsored cellular telephone license tender process in Iraq, carried out under the auspices of the Coalition Provisional Authority (CPA), had been rigged and that the process lacked transparency. The investigation identified what IATT believes is serious, credible evidence of criminal wrongdoing by U.S. employees pertaining to taking official acts in exchange for bribes, in violation of 18 United States Code, Section 201.

The report directly conflicts with a December 16, 2003, report filed by the DEFENSE CRIMINAL INVESTIGATIVE SERVICE (DCIS) working in support of the OFFICE OF INSPECTOR GENERAL, COALITION PROVISIONAL AUTHORITY (OIG, CPA), reference: 2004004431-16-DEC-2003-60DC-A2/R(IR). In a cover letter to OIG, DOD, SHAW recommended that the IATT report be referred to the U.S. DEPARTMENT OF JUSTICE since DCIS has already administratively

determined that it was not going to investigate the matter further.

IATT alerted the OIG on October 24, 2003, to alleged fixing and corruption in the CPA cellular license tender which resulted in the award of cellular telephone licenses for the three geographic regions of Iraq to three international consortia. The corruption centers on the involvement of NADHMI AUCHI, an Iraqi billionaire who played a role in the Iraqi-European arms trade for over two decades and who, behind the facade of legitimate business, serves as SADDAM HUSSEIN's principal international financial manipulator and bag man. AUCHI has become a British citizen and currently lives in London. Either through his Luxembourg-based holding company, GENERAL MEDITERRANEAN HOLDINGS SA, or possibly through a controlled subsidiary, CIPAF INTERNATIONAL SA OF PANAMA, AUCHI is the largest shareholder in the French banking conglomerate BNP PARIBAS. Because of AUCHI's role in the international arms trade and as a major commercial force in BNP PARABAS, BNP PARABAS was selected by SADDAM HUSSEIN as the sole bank administering the UN Oil-for-Food program, which is currently under investigation by Congress and a special panel created by UN SECRETARY GENERAL KOFI ANNAN. IATT learned that AUCHI managed to manipulate the U.S. and British-sponsored cellular telephone license tender by having nominal or beneficial ownership of a major part of the equity in two of the winning consortia and, through a complex arrangement, a controlling interest in all three licenses.

The DCIS investigation, as outlined in a report dated December 16, 2003, concluded that any wrongdoing relating to the cellular telephone license tender process involved non U.S. government funds and focused on non-U.S. nationals. DCIS relied on information provided by DANIEL SUDNICK and not the original underlying supporting material provided by a DEPUTY U.S. TRADE REPRESENTATIVE. Consequently, the DCIS investigation was "seriously incomplete" and "worthless." When the matter resurfaced in March, 2004, STUART BOWEN, CPA IG, was too overburdened in Iraq to conduct adequate investigation of such a complex matter. Hence, the IATT report reflects the most accurate picture of what transpired.

IATT found "significant and credible evidence" that a conspiracy was organized by NADHMI AUCHI to offer bribes to "fix" the awarding of the three cellular telephone licenses. Furthermore, the conspiracy existed to ensure certain firms were awarded the licenses to assure that AUCHI's control was total and that the European GSM cellular telephone technology would be universally adopted and remain dominant in Iraq. This resulted

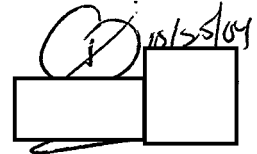
in the exclusion of the American CDMA cellular technology in the rebuilding of Iraq's telecommunications system.

IATT findings rely heavily on ~~Liberty Mobile, a Delaware corporation and CDMA-based consortium, and Turkcell, a GSM-based consortium,~~ two of the losing bidders for the Iraq cellular telephone licenses. Both consortia brought their superior capabilities to the Defense Department via the office of the Deputy Secretary and the defense communications team that had been assembled to support the Iraq reconstruction effort. Both were strongly encouraged to engage themselves in the process, but neither could survive the manipulations of process by the AUCHI combine. Both consortia, even after being unfairly eliminated in the license tender process, continued their efforts to participate in the reconstruction of Iraq; Liberty by working on the First Responder Network and Turkcell by attempting to buy out key parts of the licenses which had been denied them. Both consortia displayed "the very best American international business practices."

Bribe payments to participants are hard to prove. Evidence of such payments tends to be either circumstantial or hearsay. Two Iraqi ministers (unnamed) identified DANIEL SUDNICK as one of three people paid by AUCHI's paymaster. Another minister who knows SUDNICK that he was "fired for corruption." Bribes amounting to between \$18 million and \$21 million were allegedly allocated among six people. As transactions in Bagdad are in cash, it is difficult to track the funds. The DCIS report indicated that the \$5 million alleged to go to two British individuals may have been the \$5 million fee payable to the Ministry of Communications for one of the licenses. This may be true, but there is no record to show where the money went. As financial controls at the Ministry of Communications were almost non-existent, it is reported that all of the records relating to the tender have disappeared.

- 1 -

FEDERAL BUREAU OF INVESTIGATION

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[redacted], Director of Technology Assessment,
International Armament and Technology Trade Directorate, U.S.
Department of Defense, forwarded to the undersigned agent via
facsimile the following documents:

1. E-Mail dated 3/22/04 from [redacted] to [redacted]
[redacted] entitled "Iraq telecom report 22nd, March 04."
2. Curriculum vitae for [redacted]
3. Curriculum vitae for [redacted]
4. E-Mail dated 4/29/04 from John Shaw to [redacted]
[redacted] entitled "Iraq Cellular Issue."

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Copies of these documents are attached.

Investigation on 10/18/04 at Falls Church (via facsimile)

File # 58A-WF-229569-17 Date dictated 10/20/04

by SA [redacted]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[redacted] 042943.302

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10/24/04

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/19/2004

[redacted] Director of Technology Assessment, International Armament and Technology Trade Directorate, Office of the Undersecretary of International Technology Security, U.S. Department of Defense, 3600 Defense Pentagon, 3E1034, Washington D.C., 20301-3600, [redacted] was interviewed at the Northern Virginia Resident Agency, Washington Field Office. Having been apprised of the identities of the interviewing agents and of the purpose for the interview, [redacted] provided the following information:

[redacted] date of birth and social security number are [redacted] home address and telephone number are [redacted]

[redacted]

In approximately January, 2002, [redacted] who was looking for a job with the Department of Defense (DOD), was introduced by [redacted] to JOHN SHAW, Deputy Undersecretary for International Technology Security (ITS). SHAW was attempting to negotiate a Memorandum of Understanding (MOU) with the DOD Office of Inspector General (OIG) which would give SHAW's office the authority to investigate, under the auspices of the DOD OIG, any breakdowns, corruption, or irregularities in the transfer of American technology to foreign countries. SHAW liked [redacted] background, and subsequently, in January, 2003, hired [redacted] as Director of Assessment for the entity which would be created under the terms of the MOU called the International Armament and Technology Trade Directorate (IATTD). The MOU was still being negotiated between SHAW's office and the OIG when [redacted] was hired. [redacted] a member of SHAW's staff, who took the lead in negotiating the MOU, finally succeeded in getting it signed several months after [redacted] was hired.

Investigation on 10/18/04 at Falls Church, VirginiaFile # 58A-WF-229569-18Date dictated 10/19/04by SA [redacted]
SA [redacted]

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10/24/04

58A-WF-229569

Continuation of FD-302 of _____, On 10/18/04, Page 2

In May, 2003, shortly after the creation of the Coalition Provisional Authority (CPA) in Iraq under [redacted] SHAW was tasked with backing up [redacted] who had just been named the

[redacted] in Iraq. SHAW was a personal friend of [redacted] believes SHAW was selected to support [redacted] by [redacted] Special Assistant to the White House Liaison, [redacted] Executive Assistant to [redacted] assisted SHAW in his efforts to support [redacted] Initially, most of his efforts went into building a staff for SHAW and working on transportation projects for Iraq, such as the renovation of the port in Umquassar. [redacted] was responsible for the hiring of [redacted] to serve as an [redacted] on SHAW's staff. [redacted] and [redacted] had known each other for years. Later, he helped hire [redacted] to be a part of SHAW's staff.

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In the summer of 2003, [redacted] hired [redacted] and [redacted] to assist him in Iraq. [redacted] believes it was [redacted] who first introduced both individuals to SHAW.

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[redacted] had no official role in either the tender process for Iraqi cellular telephone licenses or the contract award process involving the First Responders Network (FRN) in Iraq. However, because of his presence in the office, he became familiar with both processes and assisted SHAW in his efforts to get the cellular telephone licenses awarded and the FRN built.

Later in the summer of 2003, a Washington D.C. lawyer named [redacted] who knew SHAW socially, brought representatives of SSA MARINE, a major construction firm, and NANA Pacific, a Native Alaskan Corporation (ANC), into SHAW's office with a proposal. SSA MARINE was already doing work on the port of Umquassar in Iraq as part of an Agency for International Development (AID) contract. SSA MARINE was looking to expand its role in rebuilding the port by joining with NANA Pacific, which, as an ANC company, was able to secure no-bid contracts through the Small Business Administration (SBA) 8A program for disadvantaged businesses. [redacted] believes this was when SHAW first realized that he could get work done quickly in Iraq through the use of this ANC 8A program by bypassing the delays and logistical problems posed by the normal contract award process. SHAW wanted a way to deliver resources to Iraq as quickly and efficiently as possible.

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Continuation of FD-302 of _____, On 10/18/04, Page 3

NANA Pacific is a proven construction firm based in Alaska. _____

_____ Although the process took a long time, NANA eventually was awarded a contract to do work on the port of Umquassar. _____ believes that _____, who is a _____ became an advocate of NANA Pacific and supported its efforts to get DOD contracts because she was hoping to secure employment with that firm after she left government service. _____ has no specific evidence to support this belief.

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On January 12, 2004, SHAW sponsored a meeting in his office at the Pentagon to discuss how best to build a First Responders Network (FRN) in Iraq using American-based CDMA technology. Invited to the meeting were representatives of NANA Pacific and Guardian Net, a consortium put together by an _____ and a close friend of SHAW named _____ Guardian Net consortium included such major technology firms as Lucent, Samsung, and Qualcomm. It appeared to _____ that SHAW had helped bring NANA Pacific together with Guardian Net after seeing that NANA Pacific's ANC 8A status could be used to get the FRN in Iraq built quickly and efficiently. _____ in Iraq, had a major role in building the FRN, was also present at the meeting.

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_____ is a long-time friend of SHAW. _____ whom _____ first met in the summer of 2003, _____ that the only business relationship he has ever had with SHAW was when he purchased a piece of antique furniture from him over twenty years ago. _____

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Although he is not sure, _____ believes _____ may have been the person who first introduced SHAW to _____ first heard of _____ in October, 2003, when _____ produced evidence of corruption in the tender process for the Iraqi cellular telephone licenses. _____ believes this evidence of corruption was sent to SHAW by _____ a lawyer named _____ and possibly _____. On October 23, 2003, SHAW relayed this evidence to DOD OIG, which launched an investigation into the matter.

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Continuation of FD-302 of _____, On 10/18/04, Page 4

On February 8, 2004, [] left SHAW's office after being hired to become the chief of staff for the CPA Inspector General (IG) in Iraq, STUART BOWEN. Before he could relocate to Bagdad, [] Consequently, instead of joining BOWEN in Bagdad, [] became his special assistant at the Pentagon. Because of his new position, [] told SHAW that he had to recuse himself from any further actions relating to the cell phone license tender and the FRN contract.

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[] and others in the Pentagon had become extremely unhappy with [] performance in Iraq. First, he had presided over a bungled tender process for the Iraqi cellular telephone licenses. Now the FRN contract award to NANA Pacific/Guardian Net was becoming bogged down. SHAW was about the only Pentagon official working on telecommunications issues in Iraq who continued to stand by [] despite increasing evidence of []. In early March, 2004, a major blowup occurred between [] and SHAW over the FRN as SHAW began to realize that [] to get the FRN built in Iraq. After [] received a telephone call from [] to []

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concerns over SHAW's "criminal" behavior in trying to get the FRN up and running in Iraq by having the FRN contract awarded on a sole source basis to NANA Pacific/Guardian Net. [] was shocked by [] reaction, as he viewed the [] SHAW and [] as common policy differences. Shortly thereafter, [] was told to [] In mid-April, [] returned to the United States. Before departing [] went to CPA IG [] accusing SHAW of a number of improprieties relating to his efforts to get NANA Pacific/Guardian Net the FRN contract. As a result, [] to SHAW's staff, saying that a conflict of interest had arisen making it impossible for [] [] does not feel SHAW had committed any improprieties relating to his efforts to help rebuild the telecommunications system in post-war Iraq. [] SHAW to cover for []

Shortly after [] returned to SHAW's staff, SHAW received a copy of the investigative report prepared by OIG relating to the allegations of corruption in the Iraq cell phone license tender. He recognized the OIG report as a "whitewash" and decided to conduct his own investigation. However, at about this

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Continuation of FD-302 of _____, On 10/18/04, Page 5

time JOE SCHMITZ, DOD IG, announced to SHAW that he was canceling the MOU between his office and SHAW's office which had granted SHAW the authority to conduct investigations under the auspices of the OIG. Despite this, SHAW was determined to uncover the facts on the corruption which had undermined the cell phone license tender. He decided that, as Deputy Undersecretary of Defense for International Technology Security, he still had the authority to conduct an investigation. The only real difference was that now the results of his investigation would be presented to OIG rather than be presented by OIG. SHAW tasked [] with pulling together all of the information available regarding the cell phone license tender. Over the next two months or so [] did exactly that, compiling a huge volume of information from multiple sources.

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[] were then tasked by SHAW with drafting an investigative report on the issue. SHAW reviewed the draft, made revisions, and produced a final product. The report, entitled "Preliminary Findings: Report to the Inspector General Into Mobile Telecommunications Licenses in Iraq," was presented by SHAW to DOD OIG on May 11, 2004,

One of the main findings of SHAW's investigation was that

[] had accepted bribes for steering the Iraqi cell phone licenses to three consortia controlled by an Iraqi billionaire named []. [] first heard this allegation during conversations with SHAW and [] later was shown an e-mail from [] dated March 22, 2004, in which [] provided information from two Iraqi sources indicating that [] had received bribes for his role in corrupting the tender process. [] called [] and spoke to him about this source information. [] told him that his two sources for the information were Iraqis who travel back and forth between Great Britain and Iraq. [] recalls that [] may have mentioned that the two Iraqis worked for him. Because the sources feared for their lives, [] asked [] not to include their names in the report. [] agreed. [] subsequently forwarded to [] by facsimile resumes for the two sources. [] could not recall their names but thought he could locate their resumes in his records. Around the same time, [] also heard from [] who had just returned from Iraq, that he had heard on the "Arab street" that [] had been bribed. Finally, [] read a letter from [] who

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Continuation of FD-302 of _____, On 10/18/04, Page 6

represented Turkacell, another of the losing bidders in the license tender process. In the letter [] said that the entire process had been rigged and that bribes had been paid. [] felt that this evidence regarding [] acceptance of bribes was sufficiently compelling to be included in the report.

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During his work on the report, [] heard from Colonel [] who had become the chief of staff to CPA IG STUART BOWEN in Bagdad, that the name of [] had come up in talks about corruption and bribes relating to the cell phone license tender.

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SHAW gave copies of his report to several news media organizations after removing the title page which included the warning "FOUO - LAW ENFORCEMENT SENSITIVE. NOT TO BE RELEASED OUTSIDE THE DOD OIG WITHOUT AUTHORIZATION FROM THE DIG - INV." SHAW justified this by explaining that since his MOU with the OIG had been canceled, he was no longer a law enforcement official. He pointed out that his report was not a report from OIG, but to OIG by a non-law enforcement entity. Consequently, SHAW did not consider the release of the report to the media to be a "leak."

At the conclusion of the interview, [] provided a packet of miscellaneous documents to the interviewing agents.

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From: (WF) (FBI)
Sent: Tuesday, October 26, 2004 2:08 PM
To: (WF) (FBI)
Cc: (WF) (FBI)
Subject: FOIA request for Jack Shaw

UNCLASSIFIED
NON-RECORD

the LA Times is appealing DOD's assertion of FOIA Exemption 7(A) to deny FOIA access to DOD's investigation of Jack Shaw. This is routine. A FOIA requestor must appeal the initial denial, before they can take any further action.

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, Assistant Inspector General, Office of Communications and Congressional Liaison, Department of Defense, Office of Inspector General, 400 Army Navy Drive, Arlington, VA 22202-4704, fax number
 is the reviewing official for the appeal. DOD has requested another letter affirming that the FBI's criminal investigation is still pending, that the release of these records could be expected to interfere with enforcement proceedings, and requesting that DOD continue to assert Exemption 7(A). DOD would also like to know whether, based on your review of the records, any records can be released at this time.

Give me a call, if you have any questions.

SSA
Associate Division Counsel
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10/27/2004

58A-WF-229569-19





U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

7799 Leesburg Pike
Falls Church, Virginia 22043
703-762-3334

October 27, 2004

[redacted]
Assistant Inspector General
DOD Office of Communications and Congressional Liaison
400 Army Navy Drive
Arlington, Virginia 22202

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RE: FOIA Request

Dear Mr. [redacted]:

The purpose of this communication is to confirm a conversation between Special Agent [redacted] of our office and [redacted] of your office on October 26, 2004, in which Special Agent [redacted] indicated that there is still an ongoing investigation into allegations of wrongdoing by John A. Shaw, Deputy Undersecretary of Defense for International Technology Security. Special Agent [redacted] also indicated that all of the documents provided by your office in your referral of this matter to the FBI are still needed in this investigation and the release of any of these records could interfere with law enforcement proceedings. Consequently, our office recommends that you make an Exemption B7(A) response to the request made to your office by the Los Angeles Times under the Freedom of Information Act (FOIA).

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Please contact Special Agent [redacted] if you have any questions. Thank you for your assistance in this matter.

Sincerely yours,

[redacted]
Assistant Special Agent in Charge

[redacted]
Supervisory Special Agent

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[redacted] 043011.1et

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/03/2004

11/04/04

[redacted] Director of Technology Assessment, International Armament and Technology Trade Directorate, Office of the Under Secretary of Defense for International Technology Security, U.S. Department of Defense, 3600 Defense Pentagon, 3E1034, Washington D.C., 20301, [redacted] was telephonically contacted and asked several follow-up questions relating to his interview of October 18, 2004. [redacted] provided the following information:

[redacted] asked SHAW twice for the identities of the two Iraqi ministers overheard by [redacted] sources discussing bribes paid to CPA officials and Iraqi officials in relationship to the cell phone license tender. SHAW never provided their identities to [redacted] never asked [redacted] for their identities.

[redacted]

He provided no details.

Shortly after [redacted] returned from Iraq [redacted] he told [redacted] that there were bribery allegations being made against Iraqi ministers, CPA officials, and soldiers who had participated in the cell phone license tender. [redacted] later told [redacted] that sources on the "Arab street" had told him that [redacted] had accepted a bribe relating to his role in that tender process. [redacted] was never told any specific details about British CPA officials [redacted] accepting bribes.

Former DOD official [redacted] told [redacted] that [redacted] lost his job with the CPA in Bagdad after Secretary of State COLIN POWELL sent a letter to the CPA.

[redacted] business telephone number is [redacted] and his cellular telephone number is [redacted]

Investigation on 10/25/04 at Fallls Church, Virginia (telephonically)

File # 58A-WF-229569-21 Date dictated 11/3/04

by SA [redacted]

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11/3/04

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/03/2004b6
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[redacted]
[redacted] was telephonically contacted and asked follow-up questions relating to his 10/25/04 interview. [redacted] provided the following information:

Shortly after the Iraq war started in the spring of 2003, [redacted] acting as Liberty Mobile, made an unsolicited proposal to the Department of Defense (DOD) to build a CDMA cell phone network in Iraq. Other companies had already begun building "pirate" systems in southern Iraq before Liberty Mobile sought official sanction from DOD for their proposed system. These other companies were assisted by two British military telecommunications experts, [redacted] [redacted] later resigned his official position with [redacted] and accepted a job with one of these companies.

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Before the war started, [redacted] recognized a business opportunity in the upcoming conflict in Iraq. He contacted [redacted] about forming a consortium to build a nationwide cell phone network. [redacted] put Liberty Mobile together and registered it as a Delaware corporation sometime in the spring of 2003. Liberty Mobile's unsolicited proposal, which was little more than a letter requesting authorization from the United States military to utilize a spectrum in Iraq, called for Liberty Mobile to build a CDMA nationwide cell phone network at no cost to the government. [redacted]

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[redacted] Lucent, which is a major manufacturer of CDMA technology, convinced [redacted] of the technology's enhanced capabilities. Therefore, [redacted] invited Lucent to be a member of the Liberty Mobile consortium.

As he formed Liberty Mobile, [redacted] recognized the need to include several Iraqis on the board of directors. He bought on two Iraqi exiles living in [redacted] whom he had known for a long time, [redacted]. He also brought on [redacted] an Iraqi exile who was known and respected by the various "tribes" in Iraq [redacted] [redacted] introduced [redacted] to [redacted] and [redacted] also recommended that a [redacted] be included on [redacted]

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b7CInvestigation on 10/29/04 at Falls Church, Virginia (telephonically)File # 58A-WF-229569-22 Date dictated 11/3/04by SA [redacted]b6
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11/3/04

58A-WF-229569

Continuation of FD-302 of _____, On 10/29/04, Page 2

Liberty Mobile's board of directors. [REDACTED], who speaks fluent Arabic, has close connections with the Kurds in northern Iraq.

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Liberty Mobile hired lobbyist [REDACTED] to get Liberty Mobile's unsolicited proposal to Deputy Secretary of Defense PAUL WOLFOWITZ. Furthermore, Liberty Mobile hired international lawyer [REDACTED] to get a copy of the unsolicited proposal to ORHA chief [REDACTED] believes [REDACTED] was somehow involved in getting the proposal to [REDACTED], but could not recall his role.

[REDACTED] could not recall whether JACK SHAW was involved in getting Liberty Mobile's unsolicited proposal to WOLFOWITZ, [REDACTED] or anyone else with the authority to allocate a spectrum in Iraq. SHAW may have had knowledge of the unsolicited proposal. [REDACTED] may have told him. However, [REDACTED] does not recall ever asking SHAW to do anything to assist Liberty Mobile's unsolicited proposal.

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[REDACTED] introduced [REDACTED] to SHAW in Washington D.C. [REDACTED] believes the introduction took place in SHAW's office in the Pentagon.

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/26/2004

[redacted] date of birth [redacted] 2004, social security number [redacted]

[redacted] was interviewed at the Washington Field Office of the Federal Bureau of Investigation (FBI). Having been apprised of the identities of the interviewing agents and of the purpose for the interview, [redacted] provided the following information:

[redacted] is president of [redacted] which is a consulting firm which works with United States (US) companies interested in doing business overseas, primarily in developing countries. [redacted] The firm was founded approximately ten years ago.

[redacted] is also the [redacted] which is located in Washington D.C.

[redacted] is a graduate of [redacted], he was hired to serve on the White House Conference on [redacted] in the administration of President RICHARD NIXON. After a couple years, [redacted] left government service and entered the business world. He worked for several businesses which gave him the opportunity to travel extensively in the Middle East. [redacted] he was hired by the US Department [redacted]

[redacted] The purpose of this organization was [redacted]

[redacted] reentered the private sector, working in several businesses until 1989, when he was contacted by JOHN A. SHAW, a friend who had recently received an appointment as an Associate Deputy Secretary of Commerce. SHAW asked [redacted] to consider taking a position as the [redacted]

[redacted] accepted the post at the [redacted] where he served for about eighteen months. In 1991, [redacted] left government service again and shortly thereafter formed [redacted] he consulted for the [redacted] which was interested in developing business with US companies. [redacted]

Investigation on 10/25/04 at Washington D.C.

File # 58A-WF-229569-23

Date dictated 10/26/04

by SA [redacted]
SA [redacted]

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58A-WF-229569

Continuation of FD-302 of _____, On 10/25/04, Page 2

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expanded his consulting work to include other companies interested in overseas business investments.

_____ met JOHN A. SHAW while serving on the _____ during the 1980's. At the time, SHAW was working and living in Saudi Arabia as an employee of the US firm Booz Allen. SHAW frequently sought out _____ for advice on conducting business in Saudi Arabia. During this time, _____ and SHAW, as _____ became good personal friends. _____ and SHAW shared an avid interest in the politics and dynamics of the Middle East. Ever since, SHAW has sought _____ opinion on Middle East issues, taking advantage of _____ extensive contacts and experience in that region.

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During the 1990's, SHAW started a consulting firm, the name of which _____ could not recall, which specialized in setting up healthcare clinics internationally. The firm was based in SHAW's Chevy Chase, Maryland, residence. SHAW had a _____ named _____.

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_____ has never done any business with SHAW. Outside of government service, their relationship has been purely personal, based primarily on their mutual friends and interest in the Middle East. During the 1990's, although they communicated with each other occasionally, they rarely saw each other since _____ lived and worked outside of _____ while SHAW lived and worked in Chevy Chase, Maryland.

_____ was introduced by someone _____ could not recall whom) to _____ who, at the time, was doing work on _____ projects. Impressed by _____ shrewd business acumen, _____ ended up consulting for him on several of the projects. Since then, _____ has consulted for _____ on other projects around the world, including one in _____ in which _____ described _____ as a dear friend and business partner, as well as a "seasoned risk-taker." _____ resides in the town of _____. He is the _____ a firm which specializes in developing and raising funds for international projects.

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Continuation of FD-302 of _____, On 10/25/04, Page 3

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In 2001, after SHAW had received an appointment in the Pentagon, he attempted to persuade _____ to accept a position at DOD. _____ declined, having no interest in reentering the government at that time. This offer was made before "9/11."

Before the Iraq war began in the spring of 2003, _____ contacted _____ and predicted that the US was going to invade Iraq. _____ proposed to _____ that they form a consortium for the purpose of building a cellular telephone network in Iraq during and immediately after the war. _____ formed a consortium called Liberty Mobile and, after the war began, submitted an unsolicited proposal to Deputy Secretary of Defense PAUL WOLFOWITZ and ORHA chief _____ to build such a network at no cost to the government. The unsolicited proposal was not accepted.

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Shortly after the war in Iraq had been completed in the spring of 2003, SHAW told _____ that he had been asked to coordinate certain transportation and communications projects in post-war Iraq. He asked _____ to do some work for him in the Middle East. For example, the port of Umquassar was in bad shape and was unable to support the US efforts in post-war Iraq. At SHAW's behest, _____ explored the possible use of Saudi Arabian ports to assist the US effort. Furthermore, _____ was instrumental in arranging several meetings between SHAW and Saudis. _____ was not compensated for these efforts. It was during this post-war time frame that _____ first introduced SHAW to _____ (at first, _____ said that he "must have" been the one who introduced them, and then said he said had no reason to believe he did not introduce them to each other). SHAW already knew from _____ that _____ was involved with Liberty Mobile when _____ introduced _____ to him as _____ of that consortium. _____ made the introduction to SHAW because he believed _____ set of contacts in the Middle East could be useful to him. The introduction took place in Washington D.C.

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_____ were very partial to CDMA cellular telephone technology, which is the standard for most of the US, as opposed to GSM technology, which is the standard for Europe and most of the Middle East. They met with SHAW to explain to him the advantages of CDMA. These advantages included enhanced data transmission, built-in photographic capability, and GPS function. SHAW, who was only broadly knowledgeable about CDMA before the meeting, seemed impressed with the capabilities of the technology. Meanwhile, the creator and manufacturer of CDMA, Qualcomm, a high-

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Continuation of FD-302 of [REDACTED], On 10/25/04, Page 4

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tech California firm, was lobbying Senator CONRAD BURNS, Chairman of the Senate subcommittee on telecommunications, and Congressman DARRYL ISSA, who represents a California Congressional district which encompasses many of Qualcomm's facilities, Qualcomm representatives and/or lobbyists sought the support of these two legislators in their efforts to have CDMA technology submitted for consideration in building the cellular telephone network in post-war Iraq. The Liberty Mobile consortium put together by [REDACTED] included Qualcomm, Lucent, and Samsung and offered the use of CDMA technology in post-war Iraq.

A couple months after major combat operations ended in Iraq, the Coalition Provisional Authority (CPA) announced a public tender process for the awarding of three cellular telephone licenses for Iraq, one for the northern region, one for the central region, and one for the southern region. The entire tender process was to be carefully organized and carried out under the guidelines of the Federal Acquisition Regulations (FAR). However, the process turned out to be extremely opaque, and [REDACTED] is still not certain how it was conducted. He has heard four or five different accounts. [REDACTED] believes Liberty Mobile was the only bidder offering CDMA technology. In the end, Liberty Mobile was not selected for any of the three licenses. All three licenses were awarded to Middle Eastern consortia offering GSM technology. No one affiliated with Liberty Mobile asked SHAW to take any action on behalf of Liberty Mobile relating to the license tender process, since this would have been improper. [REDACTED] would never have asked for such a thing and SHAW would never have done it. Liberty Mobile had no more access to SHAW during this time than any other company seeking to participate in the rebuilding of Iraq. [REDACTED] does not know whether any other bidders in the license tender met with SHAW.

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[REDACTED] believes there was a massive effort by backers of the European GSM technology standard to block the introduction of CDMA technology to the Middle East. This happened in Europe where purveyors of CDMA technology to this day cannot even apply for a license because of entrenched opposition of the GSM industry. [REDACTED] heard from some of his sources in the Middle East that [REDACTED]

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[REDACTED] would be benefiting from at least two of the three newly awarded Iraqi cell phone licenses. [REDACTED] does not know how [REDACTED] was able to pull it off. He has heard "third hand" that many people directly involved in the license tender were bribed, including American and British CPA officials and Iraqi ministers.

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Continuation of FD-302 of _____, On 10/25/04, Page 5

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This "third hand" information was reported to _____ by _____ who had Iraqi sources who came up with it. _____ has no "first hand" knowledge of any corruption of the license tender process, but feels there are reasons for suspicion that the process was rigged in favor of _____ interests and against the introduction of CDMA technology to Iraq. First, Liberty Mobile has been given several different explanations by the CPA as to why their bid was not successful. Even after considering these reasons, it is still not clear to _____ why Liberty Mobile lost. Second, _____ and _____ British CPA officials tasked with drawing up the tender process, established a process which was inherently biased against CDMA. To a large extent, they adopted the specifications for the license tender from a white paper produced by a member of one of the winning consortia, which offered GSM technology. Finally, _____ had a leading role in the selection process, made it clear from his actions during the tender process that he opposed CDMA technology.

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_____ information regarding corruption of the tender process was provided primarily by two Iraqi members of Liberty Mobile's board of directors, _____. These two individuals, who were Iraqi exiles living in _____, told _____ that they attended a dinner party in Bagdad which included two Iraqi ministers. They overheard these ministers talking about how the two British CPA officials who had established the license tender process, _____, had accepted millions of dollars in bribes to steer the licenses to the winning bidders. Furthermore, they mentioned that the _____, had also accepted a bribe. Additionally, _____ sources reported that _____ had flown to London and met with representatives of Orascom and _____ only days before the announcement of the winning bidders was made. Orascom was among the winning bidders, fueling speculation that the award was "fixed" during that meeting.

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At some point after the winning bidders were announced, _____ who was in Kuwait, was told by a Kuwaiti who was affiliated with Atheer, the Kuwaiti consortium which won the license for the southern region, that he wanted to meet with _____ to divulge exactly how Atheer had been able to fix the award of that license. However, _____, who had been extremely disappointed by the tender results, was trying to "move on" and decided to depart Kuwait a day before the scheduled meeting. At this point, _____ Liberty Mobile had no interest in trying

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Continuation of FD-302 of _____, On 10/25/04, Page 6

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to overturn the award. _____ was just trying to put the entire episode behind him. _____ will not disclose the name of the Kuwaiti who had wanted to explain the details of how the tender process had been fixed in favor of Atheer.

_____ were very angry about what they viewed as a rigged tender process. They complained to representatives of Qualcomm, who, _____ believes, contacted Senator BURNS and Congressman ISSA about their concerns. However, despite their anger, Liberty Mobile took no formal action to overturn the process. They never filed a protest. _____ believes other losing bidders may have filed protests.

Once Liberty Mobile lost its bid for a cell phone license in Iraq, _____ did not discuss the matter much with SHAW. He did have several meetings with SHAW in the fall of 2003 during which they discussed several issues, including a job offer he had received at DOD and projects needed to rebuild the port of Umquassar. During these meetings, _____ and SHAW did discuss updates on the status of the cell phone licenses in Iraq. _____ did make SHAW aware of the dissatisfaction he and _____ had over the tender process. This dissatisfaction was expressed to SHAW in meetings, telephone calls, and reviews of timelines and tender documents. SHAW asked Liberty Mobile to provide all of the information it had regarding the tender process, which it did. _____ thought SHAW was simply trying to get to the bottom of what happened in the tender process. _____ did not ask or exhort SHAW to conduct an investigation into what he perceived as the corruption of the tender process. _____ is not sure why SHAW launched an investigation into the matter. He believes SHAW was probably hearing something from several other losing bidders, such as Turkcell, which influenced his decision to investigate. _____ thinks SHAW came to believe that _____ was not meant to be involved in the tender process and that people involved in the process had ganged up against CDMA technology. SHAW wanted American CDMA technology to have an opportunity to be introduced into Iraq.

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_____ cannot recall ever meeting with SHAW and _____ together after the meeting in Washington D.C. in which _____ introduced them. They may have gotten together socially on occasion, but _____ could not recall any specific instances where they did so. _____ recalls hearing from either SHAW or _____ that the two of them met once without _____; however, _____ cannot recall hearing what the meeting was about or where

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Continuation of FD-302 of _____, On 10/25/04, Page 7

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the meeting took place. As far as _____ knows, the meeting may have been a social one. _____ is not aware of any business dealings or financial arrangements between SHAW and _____

In October or November, 2003, SHAW introduced _____ to _____ asked _____ to consider being a _____ to either the _____ was also considering _____ for a position in Bagdad. _____ declined these offers. _____ also asked _____ to be a member of a _____ which he was putting together to travel to Bagdad to evaluate this offer and spent seven to ten days in Bagdad on this _____ accepted _____ While in Bagdad, _____ spent a lot of time with _____ had previously been introduced to _____ by SHAW in SHAW's office, but had never had a chance to spend any time with him. _____ and many other members of the _____ used to hang out in _____ office in Bagdad in the evenings. _____ developed a very positive opinion of _____ finding him to be a thoughtful, bright, and capable person. SHAW, at the time, shared this opinion of him. Because _____ was still involved with _____ in trying to secure a CPA contract to build a First Responders Network, _____ never discussed telecommunications issues with _____ Knowing that _____ was involved in the FRN project, _____ thought that speaking to him about it would have been improper.

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In December, 2003, SHAW set up a meeting with _____ in SHAW's office and told them he was working with NANA Pacific, an Alaska Native Corporation (ANC) on two projects. As a result, SHAW said he had become an expert on fast-track contracting using the status of NANA Pacific as an ANC company. SHAW told _____ that ANC companies can receive sole source contracts outside of the competitive bid contract process. He said he was working with NANA Pacific on a project called "Jumpstart," which would help register Iraqi voters in city centers, and also on a dredging project for the port of Umquassar. SHAW then told _____ about plans to build a First Responders Network (FRN) in Iraq, a communications system for emergency agencies. SHAW said he thought the FRN presented an excellent opportunity to introduce CDMA technology into Iraq, since its distinct advantages over GSM technology, such as enhanced data transmission and camera capability, would be tremendous assets to an emergency

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Continuation of FD-302 of [REDACTED], On 10/25/04, Page 8

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communications systems. SHAW said he could get the FRN contract to [REDACTED] CDMA consortium on a sole source basis by hooking them up with NANA Pacific, an ANC company.

Upon further reflection, [REDACTED] was not certain [REDACTED] was present in this December meeting in SHAW's office. [REDACTED] may have simply briefed him about SHAW's proposal later. [REDACTED] believes SHAW approached [REDACTED] with this proposal because they were the only ones out there pushing CDMA technology and SHAW seemed to feel CDMA deserved a chance to be introduced into the Middle East.

[REDACTED] were not particularly enthusiastic about SHAW's proposal. Although they had had an FRN component in their Liberty Mobile cell phone license bid, they were not sure they understood the FRN concept well enough. Furthermore, the FRN project involved a government contract, unlike the cell phone license tender, and they were not sure they wanted to become a government contractor on a massive project to which only \$30 million had been committed.

SHAW put NANA Pacific together with [REDACTED] and the two began negotiating the terms of a joint working agreement. The agreement was not finalized until March or April, 2004. It called for NANA Pacific to partner with Guardian Net Consortium, a group of companies and individuals organized by [REDACTED] which was almost identical to the group which had comprised Liberty Mobile, including Lucent, Qualcomm, and Samsung. Guardian Net offered the latest in CDMA technology. NANA Pacific eventually was awarded an Indefinite Delivery/ Indefinite Quantity (IDIQ) contract, which essentially pre-qualified NANA to do several projects in Iraq, including dredging and telecommunications.

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When the Statement of Work (SOW) for the FRN was issued in early 2004, many members of Guardian Net were troubled. [REDACTED] thought after reading the SOW that building the FRN under the terms outlined in that document would be a colossal waste of time. Instead of calling for the exclusive use of CDMA technology, the SOW called for what amounted to a competitive analysis between CDMA and GSM. Furthermore, the SOW called only for the construction of a Bagdad FRN, instead of a nationwide system. Finally, there was still not enough money committed to make it an attractive project in financial terms.

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Continuation of FD-302 of [REDACTED], On 10/25/04, Page 9

NANA Pacific's proposal, based on the SOW, included language calling for the construction of an FRN which would have the capability of being transformed into a nationwide commercial network if the operators of the system ever desired to do so. This language became a deal-breaker, and [REDACTED] blocked the award of the contract to NANA Pacific/ Guardian Net Consortium. [REDACTED] does not know why [REDACTED] did so. SHAW reacted strongly to [REDACTED] action, accusing [REDACTED] of having sinister motives in writing CDMA out of the script. SHAW had become a "crusader" for CDMA. SHAW pushed [REDACTED] to have the contract awarded to NANA Pacific/ Guardian Net because he had come to believe the American CDMA technology had been unfairly blocked from use in Iraq. [REDACTED] believes SHAW's efforts had nothing to do with the fact that [REDACTED] were members of Guardian Net Consortium.

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SHAW has never been promised, offered, or given anything of value (including future employment opportunities) by [REDACTED] for any actions he has taken in regard to the license tender process, the FRN, or any other project. SHAW has never asked for anything of value (including future employment opportunities) for any actions he has taken in regard to the license tender process, the FRN, or any other project, nor would he have accepted any such thing of value knowing that to do so would have been improper. [REDACTED] has never entered into a business deal or relationship with SHAW, nor to the best of his knowledge, has [REDACTED]. Neither [REDACTED] nor, to the best of his knowledge, [REDACTED], has ever asked or exhorted SHAW to provide any assistance in the course of his official duties to them or any company with which they were affiliated. Any such efforts made by SHAW were made on his own initiative and for his own purposes.

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In the winter of 2004, [REDACTED] conference in London on doing business in Iraq. The conference was sponsored by the US/Iraq Business Alliance, a non-profit organization. [REDACTED] invited SHAW to speak at the conference, which ended up causing some controversy since the speech he gave apparently had not been cleared by the Pentagon. [REDACTED] believes SHAW's expenses for the trip to London for the conference were reimbursed by the conference. [REDACTED] does not believe SHAW was paid a speaking fee. [REDACTED] does not recall meeting with [REDACTED] in London during this conference. Furthermore, [REDACTED] does not believe SHAW met with [REDACTED] during or around the time of this conference.

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Continuation of FD-302 of [REDACTED], On 10/25/04, Page 10

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[REDACTED] has met with [REDACTED] on numerous occasions overseas, including at [REDACTED] has no knowledge of SHAW ever meeting with GANLEY outside of the United States. Since SHAW assumed his current position at DOD, [REDACTED] has met with SHAW outside the United States on only one occasion, that being during the US/Iraq Business Alliance conference in London in the winter of 2004. Upon further reflection, [REDACTED] said he may have run into SHAW and [REDACTED] on one occasion at a bar in the Connaught Hotel in London. This may have been around the time of the conference in the winter of 2004.

At the conclusion of the interview, [REDACTED] provided a packet of miscellaneous documents.

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/18/2004

On November 8, 2004, the undersigned agent obtained the attached facsimile, which had apparently been sent on October 29, 2004, by [REDACTED]. In the handwritten portion of the cover page, [REDACTED] significantly altered his account of when he introduced JOHN SHAW to [REDACTED] and what actions SHAW took to promote an unsolicited proposal from Liberty Mobile to the Department of Defense to build a cellular telephone network in Iraq during and after the Iraq war.

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b7CInvestigation on 11/8/04 at Washington D.C.File # 58A-WF-229569-24 Date dictated 11/18/04by SA [REDACTED]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[REDACTED] 043231.302b6
b7C[REDACTED]
11/19/04

b6
b7CTELEPHONE: [REDACTED]
FACSIMILE: [REDACTED]**FACSIMILE MESSAGE**

TO: Mr. [REDACTED]

SUBJECT:

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DATE: 10/29/04

PAGES: 10

[REDACTED]

Attached in email from the organizers of the Iraq business conference inviting Mr. Shaw to speak, and a program for the conference. It was held in London from October 13-14, 2003. Mr. Shaw did not receive a fee for his speech nor was he reimbursed for his travel, lodging or related expenses. Also attached for Liberty Mobile prior to the public hearing, the letter requesting spectrum authorization, an executive summary explaining background on Liberty, and a page of "bullet points" on the project. Liberty was registered as a company in Delaware on March 11, 2003.

Regarding introducing [REDACTED] to Mr. Shaw, my trip expense reports suggest this was probably on February 13, 2003. My notes show a meeting I had with [REDACTED] at 12:30 P.M., and then a 6 P.M. meeting with Mr. Shaw. It is the only trip where I show meeting with [REDACTED] and Shaw the same day. If I am correct, this meeting (given the time) was probably not in Mr. Shaw's office. I know this was before any plans had been discussed for cellular activity in Iraq. Sometime earlier, Mr. [REDACTED] had said to me he was pursuing business in several developing countries and may have information from time to time of interest to the U.S.

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[REDACTED]
Facsimile Message

and could I put him in touch with someone in the government to relate this information. This was the purpose of introducing him to Dr. Shaw.

I received my files and Dr. Shaw did assist Liberty Mobile with its original proposal prior to the tender. He approached [REDACTED]

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[REDACTED], all senior advisors at the CPA, and [REDACTED]
[REDACTED] in the Secretary's office. [REDACTED] approached [REDACTED]

[REDACTED] in the CPA
(not that I can tell, [REDACTED] approached Deputy
Secretary Wolfowitz. Qualcomm approached Pentagon Controller [REDACTED]

[REDACTED] last at the Defense
Department; and Congressman Naryl Issa. The Akin Gump law firm
contacted [REDACTED] [REDACTED]

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at the State Department; AID and made an attempt; I'm not sure
if successful, to [REDACTED]. To the best of my memory, this was the
extent of our lobbying effort for the initial project.

Don [REDACTED]

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Subj: **Doing Business in Iraq conference, October 2003, London**
Date: 7/22/2003 3:37:15 PM Eastern Standard Time
From: [REDACTED]
To: John.shaw@osd.mil
CC: [REDACTED]
File: prog.doc (58368 bytes) DL Time (TCP/IP): < 1 minute
Sent from the Internet (Details)

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Dear Mr Shaw

It was a pleasure to speak to you today and I am delighted that in principle you are free to take part in the above-mentioned event.

The conference will be held in London in the week commencing 13 October 2003 - I attach a copy of the initial draft programme fyi. As you know, we are organising this in conjunction with the US-Qatar Business Council.

As discussed, we would be most honoured if you would consider making a keynote address on day one of this event perhaps on the contracting process. However as the situation in Iraq is so fluid, I do realise that nearer the time of the conference, you may wish to change the title of the speech to a more topical issue. The anticipated audience will include government officials, policy advisors, multilateral lenders, export credit agencies, investment banks, retail banks, oil and gas companies, construction companies, power companies, telcos, lawyers, insurance companies, security consultants and the international media to name but a few.

Secondly, I would be most interested to hear your critical comments on the programme plus any suggestions that you might have for its improvement.

I do hope that you will be able to confirm your participation in this event and look forward to hearing from you soon as we would like to start the marketing campaign as soon as possible due to the holiday period. Please do not hesitate to call me on [REDACTED] if you have any questions at all.

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Thank you very much indeed for your prompt attention to this matter.

Kind regards

P.S. Please could you also advise me what [REDACTED] exact job title is? Thank you.

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Tuesday, July 22, 2003 America Online: [REDACTED]

FROM : [REDACTED] ASSOCIATES INC

PHONE NO. : [REDACTED]

Oct. 29 2004 04:26PM P4

Page 2 of 2

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Tuesday, July 22, 2003 America Online: [REDACTED]

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INTERIM AUTHORIZATION OF SPECTRUM : IRAQ

Because of the emergency situation in Iraq, the urgent need to coordinate and enhance on-the-ground humanitarian relief operations, and the immediate needs of Iraqi citizens for reliable telecommunications, the Department of Defense views as necessary and desirable the expedited deployment across Iraq of a CDMA cellular telecommunications network to provide mobile voice and data communications services, and which will supplement an expedited GSM cellular network being separately deployed by the U.S. Government in Iraq.

In view of the capacity and willingness of Liberty Mobile, a Delaware corporation with unique experience in cellular telecommunications operations in transition and post-conflict markets, to deploy and install immediately such a network in Iraq at no cost to the Department of Defense, Liberty Mobile is hereby authorized, on an interim basis, as follows:

- (1) exclusive nationwide access to 50 MHz of spectrum in the 800 to 850 MHz band (utilizing 25 MHz for transmission and 25 MHz for receipt);
- (2) an allocation of spectrum in the 10 GHz band (for utilization as backhaul and trunking as required); and
- (3) permission to immediately deploy the above referenced network.

This interim authorization shall be in effect until such time as the Government of Iraq has established a fully functioning regulatory agency for wireless telecommunications with authority to determine rights to and disposition of the above referenced spectrum. The present authorization shall in no way prejudice future decisions and determinations of such regulatory agency. Nor shall it preclude the Department of Defense from issuing interim authorizations to other operators for radio spectrum frequencies different from (1) and (2) above.

It is understood that Liberty Mobile will source and deploy its CDMA equipment according to applicable U.S. laws.

It is further understood that Liberty Mobile intends to provide free cell phones and service at discounted rates to non-governmental humanitarian relief organizations in Iraq.

LIBERTY MOBILE**Executive Summary**

Liberty Mobile Holdings Inc. is a Delaware company with British and Iraqi Exile minority shareholders. Liberty Mobile's objective is to provide a rapid rollout mobile communications system for the provision of essential telecommunications services as an interim solution for civilian/business users in Iraq's largest cities. The provision of such service will constitute an important short-term element of reestablishing a functioning socioeconomic fabric in post liberation Iraq.

Liberty Mobile has selected Lucent Technologies/Bell Labs as its strategic partner for its network deployment. Lucent is the world's leading provider of CDMA based wireless communications networks. The principles, shareholders and management of Liberty Mobile have a long-standing and successful history of cooperation with Lucent. In a previous wireless network rollout, together with Lucent, Liberty Mobile's principles achieved the only on-time network deployment of a national wireless network across major European cities. The combination of Lucent's technology and know how coupled with Liberty Mobile's highly experienced management team will ensure the fast and efficient rollout of Liberty Mobile's service for Iraq.

Liberty Mobile has assembled a management team with unrivalled experience in CDMA network deployments and wireless communications network operations. The vast majority of the management team has worked together on several previous successful projects including the rollout of one of the world's first CDMA networks in Brazil. The management also has a strong track record of building businesses and meeting deadlines in difficult emerging market environments. At considerable personal risk, our highly professional Iraqi management team have already mapped out and visited site locations for potential cell sites in Baghdad. This will allow Liberty Mobile to 'hit the ground running' once the city has been liberated, be that next week or in 3 months.

In order to meet its objective, Liberty Mobile will need to be permitted by the relevant body to operate its network in the 850Mhz radio band using 25Mhz in the transmit and 25Mhz in the receive. This will allow us to also provide immediate internet access at faster than dial up speeds as well as regular voice service. Liberty will need to access spectrum in the 10Ghz band to link cell site locations in the towns. A commercially available satellite link up will be used to connect cities until a fibre solution can be deployed. An added advantage of Liberty Mobile's plan is that through its deployment of US CDMA 2000 technology, the CDMA standard (a rival to Europe's GSM based technology) will gain a foothold in the Middle East and could provide for an important showcase for the region.

Liberty Mobile Holdings Inc. looks forward to the potential opportunity of working in cooperation with our government to achieve the provision of these important services.

LIBERTY MOBILE**QUICK-START WIRELESS SERVICES
FOR POST-CONFLICT IRAQ**

No mobile telecommunications service exists in Iraq at present. For post-conflict reconstruction, it is imperative to have in place a fully functioning, reliable wireless system to facilitate essential civilian and business operations throughout the country. This has both important humanitarian and security ramifications. Wireless telecommunications is a priority area of immediate reconstruction planning.

Liberty Mobile has a plan for rapid post-conflict roll-out of a mobile system in Iraq's largest cities using CDMA technology from Lucent. The Liberty Mobile plan has several clear advantages over available alternatives. It is funded by private investors, can be deployed rapidly, and will provide a strategic entry point in the Middle East for leading-edge U.S. technology.

Rapid Deployment

- CDMA radio planning requirements are very versatile, so that a network using this technology can be deployed much quicker than a GSM based network.
- Liberty Mobile's Iraqi exile shareholders own 147 buildings in Baghdad. We have done some preliminary studies and have selected 60 buildings in downtown Baghdad as cell sites.
- Liberty Mobile's ability to deploy services quickly is a key advantage. Our speed of deployment means that we will be able to support humanitarian efforts in Iraq by providing subsidized handsets and services.
- Rapid deployment is absolutely critical in order to reduce the risk of pirate wireless operators that will try to "piggyback" on the GSM systems of neighbouring countries to provide services. The last thing post-conflict Iraq needs is more black marketeering.

Security

- CDMA allows the use of GPS tracking of handsets by an operator and/or government.
- The ability of other nations to eavesdrop over the air interface is more difficult on CDMA.

Better Services

- CDMA2000 is a technically superior way to provide voice and data services than GSM and its various upgrade options, although GSM has many more users, primarily for historical reasons.
- CDMA2000 makes more efficient use of scarce spectrum, which means that increased voice capacity can be provided for the same spectrum allocation.
- CDMA2000 offers high speed data transmission. These will be essential in a liberated Iraq, as it will take years to rollout high speed data services over fixed line networks.
- CDMA2000 allows efficient local loop coverage of rural areas. Teledensity in Iraq is less than 3%. Operators in India, Indonesia and Australia have used CDMA2000 to rollout voice services to rural areas.

Showcase for US Technology

- A CDMA2000 rollout in Iraq would provide a showcase for US technology in the region, and might convince neighbouring countries to move to CDMA2000 when upgrading their existing GSM networks.

FEDERAL BUREAU OF INVESTIGATION

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Precedence: ROUTINE

Date: 11/18/2004

To: Washington Field

From: Washington Field

Squad CR15

Contact: SA 

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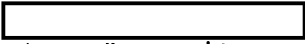
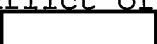
Approved By: 

Drafted By:

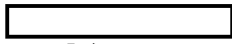
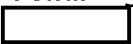
Case ID #: 58A-WF-229569,25 (Pending)

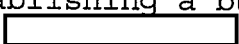
Title: JOHN A. SHAW,
DEPUTY UNDERSECRETARY OF DEFENSE
FOR INTERNATIONAL TECHNOLOGY SECURITY,
U.S. DEPARTMENT OF DEFENSE;
POSSIBLE CONFLICT OF INTEREST

Synopsis: Legal analysis re Title 18, USC, Section 208.

Details: On 11/15/04, the writer consulted PLA  regarding the definition of the term "general partner" as it applies to the conflict of interest statute, Title 18, USC, Section 208. PLA  provided a copy pages 624 to 639 of 5 CFR Chapter XVI (1-1-03) (see attached), a section (page 630) of which indicates that the term refers to a legal partnership between the government official and one or more other general partners.

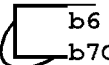
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On 11/18/04, the writer consulted AUSA  EDVA, regarding the term "general partner" as it applies to the same statute. AUSA  concurred that the term refers to a legal partnership in which the government official is a general partner with one or more other general partners.

The writer has been trying to assess whether evidence establishing a business relationship between subject JOHN SHAW and  would be relevant to demonstrating a conflict of interest in captioned matter.

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11/19/04

§ 2638.706

training must be presented by a qualified instructor or prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape; and

(2) An amount of official duty time the agency determines is sufficient for written training in the years in which the employee does not receive verbal training. The written training must be prepared by a qualified instructor. The employee's initial ethics orientation may satisfy the written training requirement for the same calendar year.

(d) *Exceptions.* Written ethics training prepared by a qualified instructor will satisfy the verbal training requirement for a covered employee (or group of covered employees) if sufficient official duty time is provided for the training and:

(1) The designated agency ethics official (or his or her designee) makes a written determination that verbal training would be impractical;

(2) The employee is a special Government employee expected to work 60 or fewer days in a calendar year;

(3) The employee is an officer in the uniformed services serving on active duty for 30 or fewer consecutive days; or

(4) The employee is designated under paragraph (a)(6) of this section to receive training.

§ 2638.706 Agency's written plan for annual ethics training.

(a) The designated agency ethics official (or his or her designee) is responsible for directing the agency's ethics training program. The designated agency ethics official (or his or her designee) must develop a written plan each year for the agency's annual training program.

(b) The written plan must be completed by the beginning of each calendar year.

(c) The written plan must contain:

(1) A brief description of the agency's annual training.

(2) Estimates of the number of employees who will receive verbal training according to the following table:

Employees who will receive verbal training	Number
(i) Public filers.	
(ii) Employees other than public filers.	

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(3) An estimate of the number of employees who will receive written training according to the following table:

Employees who will receive written training	Number
Employees other than public filers who will receive training under § 2638.705(c)(2).	

(4) Estimates of the number of employees who will receive written training instead of verbal training according to the following table:

Employees who will receive written training instead of verbal training	Number
(i) Public filers who qualify for the exception in § 2638.704(e)(1).	
(ii) Public filers who qualify for the exception in § 2638.704(e)(2).	
(iii) Employees other than public filers who qualify for the exception in § 2638.705(d)(1).	
(iv) Employees other than public filers who qualify for the exception in § 2638.705(d)(2).	
(v) Employees other than public filers who qualify for the exception in § 2638.705(d)(3).	
(vi) Employees other than public filers who qualify for the exception in § 2638.705(d)(4).	

(d) The written plan may contain any other information that the designated agency ethics official believes will assist the Office of Government Ethics in reviewing the agency's training program.

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

Subpart A—General Provisions

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2640.302 Waivers issued pursuant to 18 U.S.C. 208(b)(3).

2640.303 Consultation and notification regarding waivers.

2640.304 Public availability of agency waivers.

AUTHORITY: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

SOURCE: 61 FR 66841, Dec. 18, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 2640.101 Purpose.

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he has a personal financial interest, or in which certain persons or organizations with which he is affiliated have a financial interest. The statute is intended to prevent an employee from allowing personal interests to affect his official actions, and to protect governmental processes from actual or apparent conflicts of interests. However, in certain cases, the nature and size of the financial interest and the nature of the matter in which the employee would act are unlikely to affect an employee's official actions. Accordingly, the statute permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. Section 208(b)(2) provides that the Director of the Office of Government Ethics may, by regulation, exempt from the general prohibition, financial interests which are too remote or too inconsequential to affect the integrity of the services of the employees to which the prohibition applies. The regulations in this part describe those financial interests. This part also provides guidance to agencies on the factors to consider when issuing individual waivers under 18 U.S.C. 208 (b)(1) or (b)(3), and provides an interpretation of 18 U.S.C. 208(a).

§ 2640.102

§ 2640.102 Definitions.

For purposes of this part:

(a) *Diversified* means that the fund, trust or plan does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan's trustee has a written policy of varying plan investments.

NOTE TO PARAGRAPH (a): A mutual fund is diversified for purposes of this part if it does not have a policy of concentrating its investments in an industry, business, country other than the United States, or single State within the United States. Whether a mutual fund meets this standard may be determined by checking the fund's prospectus or by calling a broker or the manager of the fund. An employee benefit plan is diversified if the plan manager has a written policy of varying assets. This policy might be found in materials describing the plan or may be obtained in a written statement from the plan manager. It is important to note that a mutual fund or employee benefit plan that is diversified for purposes of this part may not necessarily be an excepted investment fund (EIF) for purposes of reporting financial interests pursuant to 5 CFR 2634.310(c). In some cases, an employee may have to report the underlying assets of a fund or plan on his financial disclosure statement even though an exemption set forth in this part would permit the employee to participate in a matter affecting the underlying assets of the fund or plan. Conversely, there may be situations in which no exemption in this part is applicable to the assets of a fund or plan which is properly reported as an EIF on the employee's financial disclosure statement.

(b) *Employee* means an officer or employee of the executive branch of the United States, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia. The term also includes a special Government employee as defined in 18 U.S.C. 202.

(c) *Employee benefit plan* means a plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3), and that has more than one participant. An employee benefit plan is any plan, fund or program established or maintained by

an employer or an employee organization, or both, to provide its participants medical, disability, death, unemployment, or vacation benefits, training programs, day care centers, scholarship funds, prepaid legal services, deferred income, or retirement income.

(d) *He, his, and him* include she, hers, and her.

(e) *Holdings* means portfolio of investments.

(f) *Independent trustee* means a trustee who is independent of the sponsor and the participants in a plan, or is a registered investment advisor.

(g) *Institution of higher education* means an educational institution as defined in 20 U.S.C. 1141(a).

(h) *Issuer* means a person who issues or proposes to issue any security, or has any outstanding security which it has issued.

(i) *Long-term Federal Government security* means a bond or note, except for a U.S. Savings bond, with a maturity of more than one year issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

(j) *Municipal security* means direct obligation of, or obligation guaranteed as to principal or interest by, a State (or any of its political subdivisions, or any municipal corporate instrumentality of one or more States), or the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(k) *Mutual fund* means an entity which is registered as a management company under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 *et seq.*). For purposes of this part, the term mutual fund includes open-end and closed-end mutual funds and registered money market funds.

(l) *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.

(m) *Particular matter of general applicability* means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties.

(n) *Pension plan* means any plan, fund, or program maintained by an employer or an employee organization, or both, to provide retirement income to employees, or which results in deferral of income for periods extending to, or beyond, termination of employment.

(o) *Person* means an individual, corporation, company, association, firm, partnership, society or any other organization or institution.

(p) *Publicly traded security* means a security as defined in paragraph (r) of this section and which is:

(1) Registered with the Securities and Exchange Commission pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and listed on a national or regional securities exchange or traded through NASDAQ;

(2) Issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-8); or

(3) A corporate bond registered as an offering with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and issued by an entity whose stock is a publicly traded security.

NOTE TO PARAGRAPH (p): National securities exchanges include the American Stock Exchange and the New York Stock Exchange. Regional exchanges include, Boston, Cincinnati, Intermountain (Salt Lake City), Midwest (Chicago), Pacific (Los Angeles and San Francisco), Philadelphia (Philadelphia and Miami), and Spokane stock exchanges.

(q) *Sector mutual fund* means a mutual fund that concentrates its investments in an industry, business, single country other than the United States or bonds of a single State within the United States.

(r) *Security* means common stock, preferred stock, corporate bond, municipal security, long-term Federal Government security, and limited partnership interest. The term also includes "mutual fund" for purposes of §2640.202(e) and (f) and §2640.203(a).

(s) *Short-term Federal Government security* means a bill with a maturity of one year or less issued by the United

States Treasury pursuant to 31 U.S.C. chapter 31.

(t) *Special Government employee* means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(u) *Unit investment trust* means an investment company as defined in 15 U.S.C. 80a-4(2) that is a regulated investment company under 26 U.S.C. 851.

(v) *United States Savings bond* means a savings bond issued by the United States Treasury pursuant to 31 U.S.C.

§2640.103 Prohibition.

(a) *Statutory prohibition.* Unless permitted by 18 U.S.C. 208(b) (1)-(4), an employee is prohibited by 18 U.S.C. 208(a) from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The restrictions of 18 U.S.C. 208 are described more fully in 5 CFR 2635.401 and 2635.402.

(b) *Particular matter.* The term "particular matter" includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. The particular matters covered by this part include a judicial or other proceeding, application or request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Overseas Private Investment Corporation decides to hire a contractor to conduct EEO training for its employees. The award of a contract for training services is a particular matter.

Example 2: The spouse of a high level official of the Internal Revenue Service (IRS) requests a meeting on behalf of her client (a major U.S. corporation) with IRS officials to discuss a provision of IRS regulations governing depreciation of equipment. The spouse will be paid a fee by the corporation for arranging and attending the meeting. The consideration of the spouse's request and the decision to hold the meeting are particular matters in which the spouse has a financial interest.

Example 3: A regulation published by the Department of Agriculture applicable only to companies that operate meat packing plants is a particular matter.

Example 4: A change by the Department of Labor to health and safety regulations applicable to all employers in the United States is not a particular matter. The change in the regulations is directed to the interests of a large and diverse group of persons.

Example 5: The allocation of additional resources to the investigation and prosecution of white collar crime by the Department of Justice is not a particular matter. Similarly, deliberations on the general merits of an omnibus bill such as the Tax Reform Act of 1986 are not sufficiently focused on the interests of specific persons, or a discrete and identifiable group of persons to constitute participation in a particular matter.

Example 6: The recommendations of the Council of Economic Advisors to the President about appropriate policies to maintain economic growth and stability are not particular matters. Discussions about economic growth policies are directed to the interests of a large and diverse group of persons.

Example 7: The formulation and implementation of the response of the United States to the military invasion of a U.S. ally is not a particular matter. General deliberations, decisions and actions concerning a response are based on a consideration of the political, military, diplomatic and economic interests of every sector of society and are too diffuse to be focused on the interests of specific individuals or entities. However, at the time consideration is given to actions focused on specific individuals or entities, or a discrete and identifiable class of individuals or entities, the matters under consideration would be particular matters. These would include, for example, discussions whether to close a particular oil pumping station or pipeline in the area where hostilities are taking place, or a decision to seize a particular oil field or oil tanker.

Example 8: A legislative proposal for broad health care reform is not a particular matter because it is not focused on the interests of

specific persons, or a discrete and identifiable class of persons. It is intended to affect every person in the United States. However, consideration and implementation, through regulations, of a section of the health care bill limiting the amount that can be charged for prescription drugs is sufficiently focused on the interests of pharmaceutical companies that it would be a particular matter.

(2) *Personal and substantial participation.* To participate "personally" means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate "substantially" means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

Example 1 to paragraph (a)(2): An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns \$20,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered "substantial" as defined in the statute.

(3) *Direct and predictable effect.* (i) A particular matter will have a "direct" effect on a financial interest if there is a close causal link between any deci-

sion or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this part.

(ii) A particular matter will have a "predictable" effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

Example 1: An attorney at the Department of Justice is working on a case in which several large companies are defendants. If the Department wins the case, the defendants may be required to reimburse the Federal Government for their failure to adequately perform work under several contracts with the Government. The attorney's spouse is a salaried employee of one of the companies working in a division that has no involvement in any of the contracts. She does not participate in any bonus or benefit plans tied to the profitability of the company, nor does she own stock in the company. Because there is no evidence that the case will have a direct and predictable effect on whether the spouse will retain her job or maintain the level of her salary, or whether the company will undergo any reorganization that would affect her interests, the attorney would not have a disqualifying financial interest in the matter. However, the attorney must consider, under the requirements of §2635.502 of this chapter, whether his impartiality would be questioned if he continues to work on the case.

Example 2: A special Government employee (SGE) whose principal employment is as a researcher at a major university is appointed to serve on an advisory committee that will evaluate the safety and effectiveness of a new medical device to regulate arrhythmia heartbeats. The device is being developed by Alpha Medical Inc., a company which has contracted with the SGE's university to assist in developing another medical device related to kidney dialysis. There is no indication that the advisory committee's determinations concerning the medical device

under review will affect Alpha Medical's contract with the university to develop the kidney-dialysis device. The SGE may participate in the committee's deliberations because those deliberations will not have a direct and predictable effect on the financial interests of the researcher or his employer.

Example 3: The SGE in the preceding example is instead asked to serve on an advisory committee that has been convened to conduct a preliminary evaluation of the new kidney dialysis device developed by Alpha Medical under contract with the employee's university. Alpha's contract with the university requires the university to undertake additional testing of the device to address issues raised by the committee during its review. The committee's actions will have a direct and predictable effect on the university's financial interest.

Example 4: An engineer at the Environmental Protection Agency (EPA) was formerly employed by Waste Management, Inc., a corporation subject to EPA's regulations concerning the disposal of hazardous waste materials. Waste Management is a large corporation, with less than 5% of its profits derived from handling hazardous waste materials. The engineer has a vested interest in a defined benefit pension plan sponsored by Waste Management which guarantees that he will receive payments of \$500 per month beginning at age 62. As an employee of EPA, the engineer has been assigned to evaluate Waste Management's compliance with EPA hazardous waste regulations. There is no evidence that the engineer's monitoring activities will affect Waste Management's ability or willingness to pay his pension benefits when he is entitled to receive them at age 62. Therefore, the EPA's monitoring activities will not have a direct and predictable effect on the employee's financial interest in his Waste Management pension. However, the engineer should consider whether, under the standards set forth in 5 CFR 2635.502, a reasonable person would question his impartiality if he acts in a matter in which Waste Management is a party.

(b) Disqualifying financial interests. The purposes of 18 U.S.C. 208(a) and this part are the term financial interest means the potential for gain or loss to the employee, or other person specified in section 208, as a result of governmental action on the particular matter. The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate. Additionally, a disqualifying financial interest might derive from a salary, indebtedness, job offer, or any

similar interest that may be affected by the matter.

Example 1: An employee of the Department of the Interior owns transportation bonds issued by the State of Minnesota. The proceeds of the bonds will be used to fund improvements to certain State highways. In her official position, the employee is evaluating an application from Minnesota for a grant to support a State wildlife refuge. The employee's ownership of the transportation bonds does not create a disqualifying financial interest in Minnesota's application for wildlife funds because approval or disapproval of the grant will not in any way affect the current value of the bonds or have a direct and predictable effect on the State's ability or willingness to honor its obligation to pay the bonds when they mature.

Example 2: An employee of the Bureau of Land Management owns undeveloped land adjacent to Federal lands in New Mexico. A portion of the Federal land will be leased by the Bureau to a mining company for exploration and development, resulting in an increase in the value of the surrounding privately owned land, including that owned by the employee. The employee has a financial interest in the lease of the Federal land to the mining company and, therefore, cannot participate in Bureau matters involving the lease unless he obtains an individual waiver pursuant to 18 U.S.C. 208(b)(1).

Example 3: A special Government employee serving on an advisory committee studying the safety and effectiveness of a new arthritis drug is a practicing physician with a specialty in treating arthritis. The drug being studied by the committee would be a low cost alternative to current treatments for arthritis. If the drug is ultimately approved, the physician will be able to prescribe the less expensive drug. The physician does not own stock in, or hold any position, or have any business relationship with the company developing the drug. Moreover, there is no indication that the availability of a less expensive treatment for arthritis will increase the volume and profitability of the doctor's private practice. Accordingly, the physician has no disqualifying financial interest in the actions of the advisory committee.

(c) *Interests of others.* The financial interests of the following persons will serve to disqualify an employee to the same extent as the employee's own interests:

- (1) The employee's spouse;
- (2) The employee's minor child;
- (3) The employee's general partner;
- (4) An organization or entity which the employee serves as officer, director, trustee, general partner, or employee; and

(5) A person with whom the employee is negotiating for, or has an arrangement concerning, prospective employment.

Example 1: An employee of the Consumer Product Safety Commission (CPSC) has two minor children who have inherited shares of stock from their grandparents in a company that manufactures small appliances. Unless an exemption is applicable under § 2640.202 or he obtains a waiver under 18 U.S.C. 208(b)(1), the employee is disqualified from participating in a CPSC proceeding to require the manufacturer to remove a defective appliance from the market.

Example 2: A newly appointed employee of the Department of Housing and Urban Development (HUD) is a general partner with three former business associates in a partnership that owns a travel agency. The employee knows that his three general partners are also partners in another partnership that owns a HUD-subsidized housing project. Unless he receives a waiver pursuant to 18 U.S.C. 208(b)(1) permitting him to act, the employee must disqualify himself from particular matters involving the HUD-subsidized project which his general partners own.

Example 3: The spouse of an employee of the Department of Health and Human Services (HHS) works for a consulting firm that provides support services to colleges and universities on research projects they are conducting under grants from HHS. The spouse is a salaried employee who has no direct ownership interest in the firm such as through stockholding, and the award of a grant to a particular university will have no direct and predictable effect on his continued employment or his salary. Because the award of a grant will not affect the spouse's financial interest, section 208 would not bar the HHS employee from participating in the award of a grant to a university to which the consulting firm will provide services. However, the employee should consider whether her participation in the award of the grant would be barred under the impartiality provision in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR 2635.502.

(d) *Disqualification.* Unless the employee is authorized to participate in the particular matter by virtue of an exemption or waiver described in subpart B or subpart C of this part, or the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the par-

ticular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignments should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to co-workers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics, is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement, or is required to do so by agency supplemental regulation issued pursuant to 5 CFR 2635.105. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: The supervisor of an employee of the Department of Education asks the employee to attend a meeting on his behalf on developing national standards for science education in secondary schools. When the employee arrives for the meeting, she realizes one of the participants is the president of Education Consulting Associates (ECA), a firm which has been awarded a contract to prepare a bulletin describing the Department's policies on science education standards. The employee's spouse has a sub-contract with ECA to provide the graphics and charts that will be used in the bulletin. Because the employee realizes that the meeting will involve matters relating to the production of the bulletin, the employee properly decides that she must disqualify herself from participating in the discussions. After withdrawing from the meeting, the employee should notify her supervisor about the reason for her disqualification. She may elect to put her disqualification statement in writing, or to simply notify her supervisor

orally. She may also elect to notify appropriate coworkers about her need to disqualify herself from this matter.

(e) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, an employee is no longer prohibited from acting in the particular matter.

(1) *Voluntary divestiture.* An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a) of this chapter, or if the agency determines in accordance with § 2635.403(b) of this chapter that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(3) *Eligibility for special tax treatment.* An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(4) *Official duties that give rise to potential conflicts.* Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

[61 FR 66841, Dec. 18, 1996, as amended at 67 FR 12445; Mar. 19, 2002]

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

§ 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans.

(a) *Diversified mutual funds and unit investment trusts.* An employee may participate in any particular matter affecting one or more holdings of a diversified mutual fund or a diversified unit investment trust where the disqualifying financial interest in the matter arises because of the ownership of an interest in the fund or trust.

Example 1 to paragraph (a): An employee owns shares worth \$100,000 in several mutual funds whose portfolios contain stock in a small computer company. Each mutual fund prospectus describes the fund as a "management company," but does not characterize the fund as having a policy of concentrating its investments in any particular industry, business, single country (other than the U.S.) or bonds of a single State. The employee may participate in agency matters affecting the computer company.

Example 2 to paragraph (a): A non-supervisory employee of the Department of Energy owns shares valued at \$75,000 in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in paragraph (a) of this section to act in matters affecting a utility company whose stock is a part of the mutual fund's portfolio because the fund is not a diversified fund as defined in § 2640.102(a). The employee may, however, seek an individual waiver under 18 U.S.C. 208(b)(1) permitting him to act.

(b) *Sector mutual funds.* (1) An employee may participate in any particular matter affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, and where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund.

(2)(i) An employee may participate in a particular matter affecting one or more holdings of a sector mutual fund where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund

and the aggregate market value of interests in any sector fund or funds does not exceed \$50,000.

(ii) For purposes of calculating the \$50,000 *de minimis* amount in paragraph (b)(2)(i) of this section, an employee must aggregate the market value of all sector mutual funds in which he has a disqualifying financial interest and that concentrate in the same sector and have one or more holdings that may be affected by the particular matter.

Example 1 to paragraph (b): An employee of the Federal Reserve owns shares in the mutual fund described in the preceding example. In addition to holdings in utility companies, the mutual fund contains stock in certain regional banks and bank holding companies whose financial interests would be affected by an investigation in which the Federal Reserve employee would participate. The employee is not disqualified from participating in the investigation because the banks that would be affected are not part of the sector in which the fund concentrates.

Example 2 to paragraph (b): A health scientist administrator employed in the Public Health Service at the Department of Health and Human Services is assigned to serve on a Departmentwide task force that will recommend changes in how Medicare reimbursements will be made to health care providers. The employee owns \$35,000 worth of shares in the XYZ Health Sciences Fund, a sector mutual fund invested primarily in health-related companies such as pharmaceuticals, developers of medical instruments and devices, managed care health organizations, and acute care hospitals. The health scientist administrator may participate in the recommendations.

Example 3 to paragraph (b): The spouse of the employee in the previous Example owns \$40,000 worth of shares in ABC Specialized Portfolios: Healthcare, a sector mutual fund that also concentrates its investments in health-related companies. The two funds focus on the same sector and both contain holdings that may be affected by the particular matter. Because the aggregated value of the two funds exceeds \$50,000, the employee may not rely on the exemption.

(c) *Employee benefit plans.* An employee may participate in:

(1) Any particular matter affecting one or more holdings of an employee benefit plan, where the disqualifying financial interest in the matter arises from membership in:

(i) The Thrift Savings Plan for Federal employees described in 5 U.S.C. 8437;

(ii) A pension plan established or maintained by a State government or any political subdivision of a State government for its employees; or

(iii) A diversified employee benefit plan, *provided:*

(A) The investments of the plan are administered by an independent trustee, and the employee, or other person specified in section 208(a) does not participate in the selection of the plan's investments or designate specific plan investments (except for directing that contributions be divided among several different categories of investments such as stocks, bonds or mutual funds which are available to plan participants); and

(B) The plan is not a profit-sharing or stock bonus plan.

NOTE TO PARAGRAPH (c)(1): Employee benefit plans that are tax deferred under U.S.C. 401(k) are not considered profit-sharing plans for purposes of this section. However, for the exemption to apply, 401(k) plans must meet the requirements of paragraph (c)(1)(iii)(A) of this section.

(2) Particular matters of general applicability, such as rulemaking, affecting the State or local government sponsor of a State or local government pension plan described in paragraph (c)(1)(ii) of this section where the disqualifying financial interest in the matter arises because of participation in the plan.

Example 1: An attorney terminates his position with a law firm to take a position with the Department of Justice. As a result of his employment with the firm, the employee has interests in a 401(k) plan, the assets of which are invested primarily in stocks chosen by an independent financial management firm. He also participates in a defined contribution pension plan maintained by the firm, the assets of which are stocks, bonds, and financial instruments. The plan is managed by an independent trustee. Assuming that the manager of the pension plan has a written policy of diversifying plan investments, the employee may act in matters affecting the plan's holdings. The employee may also participate in matters affecting the holdings of his 401(k) plan if the individual financial management firm that selects the plan's investments has a written policy of diversifying the plan's assets. Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing or stock bonus plans for purposes of this part.

Example 2: An employee of the Department of Agriculture who is a former New York State employee has a vested interest in a pension plan established by the State of New York for its employees. She may participate in an agency matter that would affect a company whose stock is in the pension plan's portfolio. She also may participate in a matter of general applicability affecting all States, including the State of New York, such as the drafting and promulgation of a rule requiring States to expend additional resources implementing the Food Stamp program. Unless she obtains an individual waiver under 18 U.S.C. 208(b)(1), she may not participate in a matter involving the State of New York as a party, such as an application by the State for additional Federal funding for administrative support services, if that matter would affect the State's ability or willingness to honor its obligation to pay her pension benefits.

61 FR 66841, Dec. 18, 1996; 62 FR 1361, Jan. 9, 1997, as amended at 67 FR 12445, Mar. 19, 2002]

§ 2640.202 Exemptions for interests in securities.

(a) *De minimis exemption for matters involving parties.* An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government, or are municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed \$15,000.

Example 1 to paragraph (a): An employee owns 100 shares of publicly traded stock valued at \$3,000 in XYZ Corporation. As part of his official duties, the employee is evaluating bids for performing computer maintenance services at his agency and discovers that XYZ Corporation is one of the companies that has submitted a bid. The employee is not required to recuse himself from continuing to evaluate the bids.

Example 2 to paragraph (a): In the preceding example, the employee and his spouse each own \$8,000 worth of stock in XYZ Corporation resulting in ownership of \$16,000 worth of stock by the employee and his spouse. The exemption in paragraph (a) of this section would not permit the employee to participate in the evaluation of bids because the aggregate market value of the holdings of the employee, spouse and minor children in XYZ

Corporation exceeds \$15,000. The employee could, however, seek an individual waiver under 18 U.S.C. 208(b)(1) in order to participate in the evaluation of bids.

Example 3 to paragraph (a): An employee is assigned to monitor XYZ Corporation's performance of a contract to provide computer maintenance services at the employee's agency. At the time the employee is first assigned these duties, he owns publicly traded stock in XYZ Corporation valued at less than \$15,000. During the time the contract is being performed, however, the value of the employee's stock increases to \$17,500. When the employee knows that the value of his stock exceeds \$15,000, he must disqualify himself from any further participation in matters affecting XYZ Corporation or seek an individual waiver under 18 U.S.C. 208(b)(1). Alternatively, the employee may divest the portion of his XYZ stock that exceeds \$15,000. This can be accomplished through a standing order with his broker to sell when the value of the stock exceeds \$15,000.

(b) *De minimis exemption for matters affecting nonparties.* An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse, or minor children of securities issued by one or more entities that are not parties to the matter but that are affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government or municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all affected entities (including securities exempted under paragraph (a) of this section) does not exceed \$25,000.

Example 1 to paragraph (b): A Food and Drug Administration advisory committee is asked to review a new drug application from Alpha Drug Co. for a new lung cancer drug. A member of the advisory committee owns \$20,000 worth of stock in Mega Drug Co., which manufactures the only similar lung cancer drug on the market. If approved, the Alpha Drug Co.'s drug would directly compete with the drug sold by the Mega Drug Co., resulting in decreased sales of its lung cancer drug. The committee member may participate in the review of the new drug.

(c) *De minimis exemption for matters of general applicability.* (1) An employee may participate in any particular matter of general applicability, such as rulemaking, in which the disqualifying

financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(i) The securities are publicly traded, or are municipal securities, the market value of which does not exceed:

(A) \$25,000 in any one such entity; and

(B) \$50,000 in all affected entities; or
(ii) The securities are long-term Federal Government securities, the market value of which does not exceed \$50,000.

(2) For purposes of this paragraph (b), the value of securities owned by the employee, his spouse, and minor children must be aggregated in applying the exemption.

Example 1 to paragraph (c): The Bureau of Export Administration at the Department of Commerce is in the process of formulating a regulation concerning exportation of portable computers. The regulation will affect all domestic companies that sell portable computers. An employee of the Department who is assisting in drafting the regulation owns \$17,000 worth of stock in CompAmerica and \$20,000 worth of stock in XYZ Computer Inc. Even though the employee owns \$37,000 worth of stock in companies that will be affected by the regulation, she may participate in drafting the regulation because the value of the securities she owns does not exceed \$25,000 in any one affected company and the total value of stock owned in all affected companies does not exceed \$50,000.

(d) *Exemption for certain Federal Government securities.* An employee may participate in any particular matter in which the disqualifying financial interest arises from the ownership of short-term Federal Government securities or from U.S. Savings bonds.

(e) *Exemption for interests of tax-exempt organizations.* An employee may participate in any particular matter in which the disqualifying financial interest arises from the ownership of publicly traded or municipal securities, or long-term Federal Government securities by an organization which is tax-exempt pursuant to 26 U.S.C. 501(c) (3) or (4), and of which the employee is an unpaid officer, director, or trustee, or an employee, if:

(1) The matter affects only the organization's investments, not the organization directly;

(2) The employee plays no role in making investment decisions for the organization, except for participating in the decision to invest in several different categories of investments, such as stocks, bonds, or mutual funds; and

(3) The organization's only relationship to the issuer, other than that which arises from routine commercial transactions, is that of investor.

Example 1: An employee of the Federal Reserve is a director of the National Association to Save Trees (NAST), an environmental organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. The employee knows that NAST has an endowment fund that is partially invested in the publicly traded stock of Computer Inc. The employee's position at the Federal Reserve involves the procurement of computer software, including software marketed by Computer Inc. The employee may participate in the procurement of software from Computer Inc. provided that he is not involved in selecting NAST's investments and that NAST has no relationship to Computer Inc. other than as an investor in the company and routine purchaser of Computer Inc. software.

(f) *Exemption for certain interests of general partners.* An employee may participate in any particular matter in which the disqualifying financial interest arises from:

(1) The ownership of publicly traded securities, long-term Federal Government securities, or municipal securities by the employee's general partner, provided:

(i) Ownership of the securities is not related to the partnership between the employee and his general partner; and
(ii) The value of the securities does not exceed \$200,000; or

(2) Any interest of the employee's general partner if the employee's relationship to the general partner is as a limited partner in a partnership that has at least 100 limited partners.

Example 1: An employee of the Department of Transportation is a general partner in a partnership that owns commercial property. The employee knows that one of his partners owns stock in an aviation company valued at \$100,000 because the stock has been pledged as collateral for the purchase of the commercial property by the partnership. In the absence of an individual waiver under 26 U.S.C. 208(b)(1), the employee may not act in a matter affecting the aviation company. Because the stock has been pledged as collateral

ownership of the securities is related to the partnership between the employee and his general partner.

Example 2: An employee of the Pension Benefit Guaranty Corporation (PBGC) has a limited partnership interest in Ambank Partners, a large partnership with more than 500 limited partners. The partnership assets are invested in the securities of various financial institutions. Ambank's general partner is Capital Investment Services, an investment firm whose pension plan for its own employees is being examined by the PBGC for possible unfunded liabilities. Even though the employee's general partner (Capital Investment Services) has a financial interest in PBGC's review of the pension plan, the employee may participate in the review because his relationship with his general partner is that of a limited partner in a partnership that has at least 100 limited partners.

66 FR 66941, Dec. 18, 1996; 62 FR 1361, Jan. 9, 1997, as amended at 67 FR 12445, Mar. 19, 2002]

§ 2640.203 . Miscellaneous exemptions.

(a) *Hiring decisions.* An employee may participate in a hiring decision involving an applicant who is currently employed by a corporation that issues publicly traded securities, if the disqualifying financial interest arises from:

(1) Ownership of publicly traded securities issued by the corporation; or

(2) Participation in a pension plan sponsored by the corporation.

(b) *Employees on leave from institutions of higher education.* An employee on a leave of absence from an institution of higher education may participate in any particular matter of general applicability affecting the financial interests of the institution from which he is on leave, provided that the matter will not have a special or distinct effect on that institution other than as part of a class.

Example 1: An employee at the Department of Defense (DOD) is on a leave of absence from his position as a tenured Professor of Engineering at the University of California at Berkeley. While at DOD, he is assigned to assist in developing a regulation which will contain new standards for the oversight of grants given by DOD. Even though the University of California at Berkeley is a DOD grantee, and will be affected by these new monitoring standards, the employee may participate in developing the standards because UC Berkeley will be affected only as part of the class of all DOD

grantees. However, if the new standards would affect the employee's own financial interest, such as by affecting his tenure or his salary, the employee could not participate in the matter unless he first obtains an individual waiver under section 208(b)(1).

Example 2: An employee on leave from a university could not participate in the development of an agency program of grants specifically designed to facilitate research in jet propulsion systems where the employee's university is one of just two or three universities likely to receive a grant under the new program. Even though the grant announcement is open to all universities, the employee's university is among the very few known to have facilities and equipment adequate to conduct the research. The matter would have a distinct effect on the institution other than as part of a class.

(c) *Multi-campus institutions of higher education.* An employee may participate in any particular matter affecting one campus of a State multi-campus institution of higher education, if the employee's disqualifying financial interest is employment in a position with no multi-campus responsibilities at a separate campus of the same multi-campus institution.

Example 1: A special Government employee (SGE) member of an advisory committee convened by the National Science Foundation is a full-time professor in the School of Engineering at one campus of a State university. The SGE may participate in formulating the committee's recommendation to award a grant to a researcher at another campus of the same State university system.

Example 2: A member of the Board of Regents at a State university is asked to serve on an advisory committee established by the Department of Health and Human Services to consider applications for grants for human genome research projects. An application from another university that is part of the same State system will be reviewed by the committee. Unless he receives an individual waiver under section 208(b)(1) or (b)(3), the advisory committee member may not participate in matters affecting the second university that is part of the State system because as a member of the Board of Regents, he has duties and responsibilities that affect the entire State educational system.

(d) *Exemptions for financial interests arising from Federal Government employment or from Social Security or veterans' benefits.* An employee may participate in any particular matter where the disqualifying financial interest arises from Federal Government or Federal Reserve Bank salary or benefits, or

from Social Security or veterans' benefits, except an employee may not:

(1) Make determinations that individually or specially affect his own salary and benefits; or

(2) Make determinations, requests, or recommendations that individually or specially relate to, or affect, the salary or benefits of any other person specified in section 208.

Example 1: An employee of the Office of Management and Budget may vigorously and energetically perform the duties of his position even though his outstanding performance would result in a performance bonus or other similar merit award.

Example 2: A policy analyst at the Defense Intelligence Agency may request promotion to another grade or salary level. However, the analyst may not recommend or approve the promotion of her general partner to the next grade.

Example 3: An engineer employed by the National Science Foundation may request that his agency pay the registration fees and appropriate travel expenses required for him to attend a conference sponsored by the Engineering Institute of America. However, the employee may not approve payment of his own travel expenses and registration fees unless he has been delegated, in advance, authority to make such approvals in accordance with agency policy.

Example 4: A GS-14 attorney at the Department of Justice may review and make comments about the legal sufficiency of a bill to raise the pay level of all Federal employees paid under the General Schedule even though her own pay level, and that of her spouse who works at the Department of Labor, would be raised if the bill were to become law.

Example 5: An employee of the Department of Veterans Affairs (VA) may assist in drafting a regulation that will provide expanded hospital benefits for veterans, even though he himself is a veteran who would be eligible for treatment in a hospital operated by the VA.

Example 6: An employee of the Office of Personnel Management may participate in discussions with various health insurance providers to formulate the package of benefits that will be available to Federal employees who participate in the Government's Federal Employees Health Benefits Program, even though the employee will obtain health insurance from one of these providers through the program.

Example 7: An employee of the Federal Supply Service Division of the General Services Administration (GSA) may participate in GSA's evaluation of the feasibility of privatizing the entire Federal Supply Service, even though the employee's own position

would be eliminated if the Service were privatized.

Example 8: Absent an individual waiver under section 208(b)(1), the employee in the preceding example could not participate in the implementation of a GSA plan to create an employee-owned private corporation which would carry out Federal Supply Service functions under contract with GSA. Because implementing the plan would result not only in the elimination of the employee's Federal position, but also in the creation of a new position in the new corporation to which the employee would be transferred, the employee would have a disqualifying financial interest in the matter arising from other than Federal salary and benefits, or Social Security or veterans benefits.

Example 9: A career member of the Senior Executive Service (SES) at the Internal Revenue Service (IRS) may serve on a performance review board that makes recommendations about the performance awards that will be awarded to other career SES employees at the IRS. The amount of the employee's own SES performance award would be affected by the board's recommendations because all SES awards are derived from the same limited pool of funds. However, the employee's activities on the board involve only recommendations, and not determinations that individually or specially affect his own award. Additionally, 5 U.S.C. 5384(c)(2) requires that a majority of the board's members be career SES employees.

Example 10: In carrying out a reorganization of the Office of General Counsel (OGC) of the Federal Trade Commission, the Deputy General Counsel is asked to determine which of five Senior Executive Service (SES) positions in the OGC to abolish. Because her own position is one of the five SES positions being considered for elimination, the matter is one that would individually or specially affect her own salary and benefits and, therefore, the Deputy may not decide which position should be abolished.

NOTE TO PARAGRAPH (d): This exemption does not permit an employee to take any action in violation of any other statutory or regulatory requirement, such as the prohibition on the employment of relatives at 5 U.S.C. 3110.

(e) *Commercial discount and incentive programs.* An employee may participate in any particular matter affecting the sponsor of a discount, incentive, or other similar benefit program if the disqualifying financial interest arises because of participation in the program, provided:

(1) The program is open to the general public; and

(2) Participation in the program involves no other financial interest in the sponsor, such as stockholding.

Example 1: An attorney at the Pension Benefit Guaranty Corporation who is a member of a frequent flier program sponsored by Alpha Airlines may assist in an action against Alpha for failing to make required payments to its employee pension fund, even though the agency action will cause Alpha to disband its frequent flier program.

(f) *Mutual insurance companies.* An employee may participate in any particular matter affecting a mutual insurance company if the disqualifying financial interest arises because of an interest as a policyholder, unless the matter would affect the company's ability to pay claims required under the terms of the policy or to pay the cash value of the policy.

Example 1: An administrative law judge at the Department of Labor receives dividends from a mutual insurance company which he takes in the form of reduced premiums on his life insurance policy. The amount of the dividend is based upon the company's overall profitability. Nevertheless, he may preside in a Department hearing involving a major corporation insured by the same company even though the insurance company will have to pay the corporation's penalties and other costs if the Department prevails in the hearing.

Example 2: An employee of the Department of Justice is assigned to prosecute a case involving the fraudulent practices of an issuer of junk bonds. While developing the facts pertinent to the case, the employee learns that the mutual life insurance company from which he holds a life insurance policy has invested heavily in these junk bonds. If the Government succeeds in its case, the bonds will be worthless and the corresponding decline in the insurance company's investments will impair the company's ability to pay claims under the policies it has issued. The employee may not continue assisting in the prosecution of the case unless he obtains an individual waiver pursuant to section 208(b)(1).

(g) *Exemption for employment interests of special Government employees serving on advisory committees.* A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in any particular matter of general applicability where the disqualifying financial interest arises from his non-Federal

employment or non-Federal prospective employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as part of a class. For purposes of this paragraph, "disqualifying financial interest" arising from non-Federal employment does not include the interests of a special Government employee arising from the ownership of stock in his employer or prospective employer.

Example 1: A chemist employed by a major pharmaceutical company has been appointed to serve on an advisory committee established to develop recommendations for new standards for AIDS vaccine trials involving human subjects. Even though the chemist's employer is in the process of developing an experimental AIDS vaccine and therefore will be affected by the new standards, the chemist may participate in formulating the advisory committee's recommendations. The chemist's employer will be affected by the new standards only as part of the class of all pharmaceutical companies and other research entities that are attempting to develop an AIDS vaccine.

Example 2: The National Cancer Institute (NCI) has established an advisory committee to evaluate a university's performance of an NCI grant to study the efficacy of a newly developed breast cancer drug. An employee of the university may not participate in the evaluation of the university's performance because it is not a matter of general applicability.

Example 3: An engineer whose principal employment is with a major Department of Defense (DOD) contractor is appointed to serve on an advisory committee established by DOD to develop concepts for the next generation of laser-guided missiles. The engineer's employer, as well as a number of other similar companies, has developed certain missile components for DOD in the past, and has the capability to work on aspects of the newer missile designs under consideration by the committee. The engineer owns \$20,000 worth of stock in his employer. Because the exemption for the employment interests of special Government employees serving on advisory committees does not extend to financial interests arising from the ownership of stock, the engineer may not participate in committee matters affecting his employer unless he receives an individual waiver under section 208(b)(1) or (b)(3), or determines whether the exemption for interests in securities at § 2640.202(b) applies.

(h) *Directors of Federal Reserve Banks.* A Director of a Federal Reserve Bank or a branch of a Federal Reserve Bank

may participate in the following matters, even though they may be particular matters in which he, or any other person specified in section 208(a), has a disqualifying financial interest:

(1) Establishment of rates to be charged for all advances and discounts by Federal Reserve Banks;

(2) Consideration of monetary policy matters, regulations, statutes and proposed or pending legislation, and other matters of broad applicability intended to have uniform application to banks within the Reserve Bank district;

(3) Approval or ratification of extensions of credit, advances or discounts to a depository institution that has not been determined to be in a hazardous financial condition by the President of the Reserve Bank; or

(4) Approval or ratification of extensions of credit, advances or discounts to a depository institution that has been determined to be in a hazardous financial condition by the President of the Reserve Bank, *provided that* the disqualifying financial interest arises from the ownership of stock in, or service as an officer, director, trustee, general partner or employee, of an entity other than the depository institution, or its parent holding company or subsidiary of such holding company.

(i) *Medical products.* A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in Federal advisory committee matters concerning medical products if the disqualifying financial interest arises from:

(1) Employment with a hospital or other similar medical facility whose only interest in the medical product or device is purchase of it for use by, or sale to, its patients; or

(2) The use or prescription of medical products for patients.

(j) *Nonvoting members of standing technical advisory committees established by the Food and Drug Administration.* A special Government employee serving as a nonvoting representative member of an advisory committee established by the Food and Drug Administration pursuant to the requirements of the Federal Advisory Committee Act (5 U.S.C. app.) and appointed under a

statutory authority requiring the appointment of representative members, may participate in any particular matter affecting a disqualifying financial interest in the class which the employee represents. Nonvoting representative members of Food and Drug Administration advisory committees are described in 21 CFR 14.80(b)(2), 14.84, 14.86, and 14.95(a).

Example 1: The FDA's Medical Devices Advisory Committee is established pursuant to 21 U.S.C. 360c(b), which requires that each panel of the Committee include one nonvoting industry representative and one nonvoting consumer representative. An industry representative on the Ophthalmic Devices Panel of this Committee has been appointed as a special Government employee, in accordance with the procedures described in 5 CFR 14.84. The special Government employee may participate in Panel discussions concerning the premarket approval application for a silicone posterior chamber intraocular lens manufactured by MedInc, even though she is employed by, and owns stock in, another company that manufactures a competing product. However, a consumer representative who serves as a special Government employee on the same Panel may not participate in Panel discussions if he owns \$30,000 worth of stock in MedInc unless he first obtains an individual waiver under 5 U.S.C. 208 (b)(1) or (b)(3).

(k) *Employees of the Tennessee Valley Authority.* An employee of the Tennessee Valley Authority (TVA) may participate in developing or approving rate schedules or similar matters affecting the general cost of electric power sold by TVA, if the disqualifying financial interest arises from use of such power by the employee or by any other person specified in section 208(a).

(l) *Exemption for financial interests of non-Federal government employers in the decennial census.* An employee of the Bureau of the Census at the United States Department of Commerce who is also an employee of a State, local or tribal government, may participate in the decennial census notwithstanding the disqualifying financial interests of the employee's non-Federal government employer in the census, provided that the employee:

(1) Does not serve in a State, local or tribal government position which is filled through public election; or

(2) Was hired for a temporary position under authority of 18 U.S.C. 23; and

(3) Is serving in a Local Census Office for an Accuracy and Coverage Evaluation function position as an enumerator, crew leader, or field operations supervisor.

66 FR 66841, Dec. 18, 1996 as amended at 62 FR 123128, Apr. 29, 1997; 65 FR 16513, Mar. 29, 2000.

§ 2640.204 Prohibited financial interests.

None of the exemptions set forth in §§ 2640.201, 2640.202, or 2640.203 apply to any financial interest held or acquired by an employee, his spouse, or minor child in violation of a statute or agency supplemental regulation issued in accordance with 5 CFR 2635.105, or that is otherwise prohibited under 5 CFR 2635.403(b).

Example 1 to § 2640.204: The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part 2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at \$20,000 in contravention of the regulation, the exemption at § 2640.202(a) for interests arising from the ownership of no more than \$15,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

66 FR 66841, Dec. 18, 1996, as amended at 67 FR 12446, Mar. 19, 2002.

§ 2640.205 Employee responsibility.

Prior to taking official action in a matter which an employee knows would affect his financial interest or the interest of another person specified in 18 U.S.C. 208(a), an employee must determine whether one of the exemptions in §§ 2640.201, 2640.202, or 2640.203 would permit his action notwithstanding the existence of the disqualifying interest. An employee who is unsure whether an exemption is applicable in a particular case, should consult an agency ethics official prior to taking action in a particular matter.

§ 2640.206 Existing agency exemptions.

An employee who, prior to January 1, 1997, acted in an official capacity in a particular matter in which he had a financial interest, will be deemed to

have acted in accordance with applicable regulations if he acted in reliance on an exemption issued by his employing Government agency pursuant to 18 U.S.C. 208(b)(2), as in effect prior to November 30, 1989.

Subpart C—Individual Waivers

§ 2640.301 Waivers issued pursuant to 18 U.S.C. 208(b)(1).

(a) *Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(1).* Pursuant to 18 U.S.C. 208(b)(1), an agency may determine in an individual case that a disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Upon making that determination, the agency may then waive the employee's disqualification notwithstanding the financial interest, and permit the employee to participate in the particular matter. Waivers issued pursuant to section 208(b)(1) should comply with the following requirements:

(1) The disqualifying financial interest, and the nature and circumstances of the particular matter or matters, must be fully disclosed to the Government official responsible for appointing the employee to his position (or other Government official to whom authority to issue such a waiver for the employee has been delegated);

(2) The waiver must be issued in writing by the Government official responsible for appointing the employee to his position (or other Government official to whom the authority to issue such a waiver for the employee has been delegated);

(3) The waiver should describe the disqualifying financial interest, the particular matter or matters to which it applies, the employee's role in the matter or matters, and any limitations on the employee's ability to act in such matters;

(4) The waiver shall be based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Statements concerning the employee's good character are not